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VIEWS

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AMERICAN CONSTITUTIONAL LAW,

IN ITS BEARING UPON

AMERICAN SLAVERY.

BY WILLIAM GOODELL.

"The Reasonableness of Law is the soul of Law."—*(Jenks.)* *Common Law Maxim.*

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INTRODUCTION.

Sure triumph of truth—Former construction of the British Constitution, by York, Talbot, Blackstone, and Mansfield—New construction involved in the decision of Lord Mansfield, in the Somerset Case, (1772)—Revolution in English Jurisprudence—Secret of that Revolution—Granville Sharpe—Origin and foundation of *law*, immutable and eternal.

The main views I have presented will assuredly be condemned,—and in that condemnation I read the sure presage of their prevalence.—They will be condemned, in this selfish and bewildered world, *because they are true*, and they will ultimately triumph, *for the same reason*. The popular suffrage may determine whether they shall be received in time to prevent the wreck of the present Federal Government:—but it can no more decide against their *final* reception than it can decide against the final reception of any other truths of science, physical or moral. There is immortality in Truth. But all lies are doomed.

Up to the month of May, 1772, it was as currently believed in England, that the slaves held and sold there, were thus held and sold, *legally*, and in accordance with the *British* Constitution, as it is now believed that the slaves held and sold in the United States of America, are thus held and sold, legally, and in accordance with the *American* Constitution. But the decision of Lord Chief Justice Mansfield, in the case of James Somerset, at the date above mentioned, revolutionized the jurisprudence of the realm, overthrew ancient precedents, reversed venerated decisions—and inscribed beneath the cross of St. George, on the royal flag—"*slaves can not breathe in England.*"

And what was the secret of that mighty revolution?—It was this.—The simple foundation truth of all legitimate and valid jurisprudence, divine and human, that *Right* is *authority*—that *reason* is the soul of *law*, had obtained a lodgment in *one human heart*, that truly apprehended its meaning, and

did not hold it an idle abstraction. That heart was *not* the heart of a York or a Talbot, (the Attorney and Solicitor General of their day,) who, in 1729 had recorded their opinions in favor of the slave master's claim. It was *not* the heart of a titled judge, Dr. Blackstone, who, at a later day, finding that a passage in his learned Commentaries was effectively quoted, at pending trials, in favor of the rights of the enslaved, adroitly furnished a new and revised edition of them, in season to be used, triumphantly, *during the trials*, by the slave master's counsel. It was *not* the heart of Sir James Eyre, Recorder of London; who, when retained as counsel, on behalf of the oppessed, adduced, to dishearten his employer, the opinions of York and Talbot, and added that the Lord Chief Justice was agreed with them. It was *not* the heart of any one of those eminent lawyers who, when consulted by the friends of the enslaved, declared "that the laws were against them." It was *not* the heart of that Lord Chief Justice Mansfield himself, whom history has ranked with "the most distinguished lawyers" of that age, and who along with them, "crouched down beneath the lie" (of legal enslavement) and "affirmed its validity"—the same Lord Chief Justice, who in 1771 (one year before his own immortal decision *against* legal slavery) was so firmly attached to the ancient precedents in its *favor*, as to refuse giving judgment against the noted kidnapper, Stapylton, when an honest jury had given verdict against him;—that Chief Justice Mansfield, who, during this same Somerset trial, when overpowered by the argument for liberty, and dreading the public rebuke, delayed judgment, hesitated, sought, unsuccessfully, to shun the issue, by beseeching the slave master to manumit the slave, and whose final decision (the boast and glory of his country) was delivered with a "lawyer-like circumlocution" that betrayed the inward bent of his mind, and the reluctance with which he yielded to the claims of equity, and the rising voice of human nature.*

* See Charles Stuart's Memoir of Granville Sharpe, which contains in detail, the particulars above alluded to.

No! It was *not* to hearts like these, that the "soul" and vitality of British Constitutional Law, and of *all* law, were revealed! It was reserved to GRANVILLE SHARPE, without rank, without office, without literary pretension, or legal erudition, in the face of all the law authorities of his age and nation, to plant himself upon the *right* and the *true*, to breast the current, almost single handed, and alone, till he saw the Right prevail, and Mansfield officially announce it — and Blackstone condescendingly record and endorse it—thus rearing a column of glory under which their own learned lumber, with that of Talbot and York, lies buried out of sight, among rubbish of the dark ages! Thus shall it always be!

Whether my argument has been happily presented, time and the public voice must determine, though they can not nullify the truths I present. I only ask the candid reader to weigh the evidences of those truths. I will not dishonor his reason by asking him whether the reception and practice of them would degrade our common humanity, or offend our benevolent CREATOR. There is neither legitimate authority, nor binding precedent, nor valid law, except in harmony with *His will*. Let the Yorks and the Talbots, the Blackstones and the Mansfield's of America understand *that*:— and let them remember their relation to the PEOPLE, to whom Divine Providence is rapidly teaching the alphabet of that sublime truth. It is for the people I have written;—for the *people*, by the grace of God, and under his authority, free, independent and sovereign—the divinely appointed arbiters of their own destinies, the students (if they will understand themselves) and the subjects, not the framers, nor yet the arbiters of those original laws, immutable and eternal, upon which human nature itself was modelled, and from the sure operation of which, no age, no nation, no race of men ever escaped.

GENERAL NOTE.

In the preparation of these pages, I have had recourse to whatever, within my reach, was thought adapted to throw light on the topics under discussion. I have availed myself, freely, of the researches of my fellow-laborers, in the cause of human freedom, who, in their constitutional investigations, have preceded me. Very few of them, have looked, however, in the direction at which I have aimed, and those few have confined their inquiries to only one or two points, and built their argument on much narrower grounds. The right to restrict slavery, on the admission of new States, the power of Congress over the Federal District and Territories, and over the inter State slave-trade, the constitutionality of the law of '93—the obligation to return fugitive slaves—the right of trial by jury—the aggressions of the slave codes on the rights of the free States—the right of petition—the freedom of speech and of the press—*these* have been the more common topics of discussion, and the argument is perhaps exhausted, on the commonly occupied grounds.—In the field I have now entered, the marks of occupancy are comparatively scarce and new. Yet many implements wielded in other departments may find a place here.

CHAPTER I.

THE QUESTION AT ISSUE.

Its meaning and magnitude—Impossibility of evasion—Testimony of American Statesmen—No middle ground—Illustrative politics of the country—State action—Action of the Federal Government—The alternative.

Do we live under a free Government, or a despotism? Does the organic law of our National Government enable it to "establish justice?" Or is it founded upon a "compromise" with injustice? Does it "secure the blessings of liberty" to its founders and their "posterity,"* or does it guaranty the curses of slavery to large and increasing numbers of them and ensure the ultimate wreck of the whole nation's freedom? Does it "form a more perfect union," or does it by "*permitting*" one half of the citizens† to trample upon the rights of the other, transform those into despots, and these into enemies?"—thus drawing down upon itself the "execration" of wise statesmen? Does it "ensure domestic tranquility," or does it "guaranty" or tolerate by "compromise" the most perfect possible specimen of "domestic" disorder? Does it "provide for the common defense," or does it "compromise" the security of the most defenseless of its citizens—"guaranty" or permit the successful invasion of all their rights, and "guaranty" likewise, or permit, by "compromise" the well known cause of all our great exposure to internal commotion—the admitted and insuperable obstacle to any effective defense against a foreign invasion, by a "third rate maritime power?" Does it "*provide* for the general welfare," or does it "*compromise*" that welfare, "*guaranty*" its deadliest enemy, and bind its citizens to stand ready, at a moment's warning, to engage in a bloody contest against liberty, against their own declaration of self-evident truths, against man's inalienable rights—"a contest" in which "no attribute of the Almighty could take sides with them?" Is it a Government in favor of human improvement, human liberty, and human happiness, or against them?

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* "The noblest blood of Virginia runs in the veins of slaves."

† In this expression of Jefferson, observe the conceded *citizenship* of the *enslaved*.—Are American *citizens* enslaved *legally*? And without a violation of the American *Constitution*?

In favor of virtue and morality or against them? Is it a Government in accordance with the Divine will or against it?

These questions are propounded, *not* in respect to any, or to all the successive *administrations* of the National Government, but in regard to its original organic structure—its inherent nature and character—*its Constitutional Law.*

Is the Constitution of the United States, rightly expounded, in favor of liberty or against it? In favor of slavery or against it? Does it "secure liberty" and accordingly prohibit its opposite—slavery? Or does it rest upon a "compromise" with slavery, or a "guaranty" of slavery, and therefore "compromise" the question of liberty, or "guaranty" its downfall?

In other words, is the Constitution of the United States, in truth and reality, what it professes, in its Preamble, to be —or is it, at bottom, the very opposite of its high professions? Is it a delusion—a deception—a fiction—a sham? Should the friends of liberty, of human nature, and of the loving Father of human nature, cling to, and cherish it? Should they labor to disabuse it, and wield it, for its professed and its real ends?—Or on the other hand, should they abandon all hope from that quarter? Should they expect from it, (faithfully administered, and in accordance with its true character,) no desirable union, no establishment of justice, no assurance of domestic tranquility, no provision for the common defense, no promotion of the general welfare, no guaranty of the blessings of liberty to themselves and their posterity? Is it incapable of securing those "inalienable rights, life, *liberty*, and the pursuit of happiness"—for the securing of which, governments are instituted among men, deriving their just powers (under God) "from the consent of the governed?" Are its powers too "*limited*" to "secure" those rights? Does it "*compromise*" and has it therefore "become *destructive* of these ends?" And is it accordingly, "the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness?" Is the right of revolution our only avenue to the security of all those *other* rights which our forefathers sought to secure and perpetuate, when, in their enterprise of founding a new government, they "appealed to the Supreme Judge of the world for the rectitude of their intentions" and "mutually pledged to each other, their lives, their fortunes, and their sacred honor?"

Impossibility of Evasion.

The point and significancy of these questions are not to be *evaded*, or turned *aside*, by the customary references made to the peculiar structure of our Government—the limitations of the Federal authority—the unimpaired sovereignty of the several States—the alleged "compromises" or "guaranties" essential to the adoption of the Federal Constitution, in the first place, or to a continuance of the Union cemented by it, now. On all these points, and on all others of the same complexion, the persons who bring them forward may make such statements as they may think proper—may adopt such theories as they may prefer, and for the argument's sake, (so far as the positions of *this* chapter are concerned) we may admit either one, or another, or all, of those statements and theories to be correct—without changing or modifying, in the slightest degree, the *issue* we have made up, and presented. Such considerations can not change or *avert* the issue, though they *may* help to *decide* it.

The question is, whether the structure of our National Government, (whatever it may *be*, in detail, and whatever circumstances may have *shaped* it) is such, *in matter of fact*, as to enable it to "secure *liberty*" and repress despotism? Whether it *can* protect human rights, and prevent violations of them?—Whether it is *competent to do the things* promised to the People, and to posterity, in its Preamble? Or whether, from any cause, it is so "limited"—"balanced"—"compromised," "guarantied," crippled, forestalled, fettered, thumbscrewed, and gagged; that it *can do nothing of the kind?*

Is it, what it professes to be, a *civil government*, empowered to "*establish justice*" (to "execute judgment between a man and his neighbor") "to ensure domestic tranquility, provide for the common defense, and secure the blessings of liberty to ourselves, and our posterity?" Or on the other hand, was there a mistake made, in supposing that the provisions of the Constitution in detail, were such as to permit and enable the Government to accomplish these high ends?

It has, somehow, come to pass, that the people of the twenty-six States constitute ONE NATION—and are bound up, in one and the same destiny. This is the admitted fact. It is claimed, too, that the Federal Constitution contains a description of the arrangements by which they are thus bound. What are those arrangements? Do they describe a civil government? Or only a confederacy? Or a treaty between disunited States? If they describe (as will be conceded by

most men) a civil government over united States—what *is* that government, *in the essential elements of its character?* Is it a free government or a despotism? Is it in favor of liberty or of slavery?—*Both*, or *neither*, it CAN NOT be. One OR the other, it undoubtedly IS.

If we *have* a civil government, deserving the name it embodies, of course, the vital elements of *all* valid civil government. What *these elements are*, we shall consider as we proceed;—If we have what *professes* to be a civil government, and yet *lacks* these vital elements, it is high time we had detected the cheat. We *pay* enough for the support of it, to feel ourselves entitled to the benefits it has promised us. If it *can not* yield them, let us know the worst of the case, and either get along without having our work done at such vast expense, or get better help, for our money.

The more successful any persons may be, in making it appear a plain case that the peculiar structure of our Government, the limitations of the Federal authority, the unimpaired sovereignty of the States, the guaranties or the compromises of the Constitution, the implied understanding of the contracting parties, *or any thing else*, has put it out of the power of the National Government to "*establish justice*," "secure the blessings of *liberty*," (including of course, the suppression of *injustice*, and of tyranny,) the more successful of course, they will be, in proving that the experiment of liberty, under our present Constitution is a failure, that its place must be supplied by a better, or that civil and religious liberty must be relinquished. Such a construction of the Constitution loads it with a mill stone that must sink it—and sink the American People with it, unless they speedily cut themselves loose from it.

To say as some do, that the National Government, in its organic structure, is *neutral* on the question of liberty or slavery, is directly to contradict its express *professions*. It is moreover a statement of that which is impossible in the nature of things. But were the statement never so correct, such a fact would decide the question that the Constitution and the National Government are worthless, unable to fulfill their high promises, or do otherwise than disappoint the expectations based upon them.

To represent, as do others, that the Constitution is partly in favor of liberty, and partly in favor of slavery, is to represent that it is a house divided against itself which can not stand. To say that it is in favor of general liberty and partial bondage, is to say that it is in favor of a known impossi-

bility, that can never be attained. To say that it can secure *general liberty*, and at the same time guaranty *local slavery*, or even compromise or permit its existence, is to affirm the greatest of moral absurdities, to deny self-evident truths, to falsify human history, to libel the unity of human nature, to profess a disbelief of the first axioms of political science—the connection between moral cause and effect:—It is to insult the common sense and moral perceptions of an intelligent and free People.

Testimony of American Statesmen.

In unison with these statements, and with the implication that the power of the National Government, (if it has any) to "secure the blessings of liberty" is, of necessity, the power to abolish slavery, we cite a few extracts from the writings of eminent American statesmen.

Thomas Jefferson.—"And *can* the LIBERTIES of a nation be thought SECURE when we have removed their *only* firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are *not to be violated, but with his wrath*? Indeed, I tremble for my country when I reflect that 'God is just, that his justice can not sleep forever.'"

"When the measure of their tears shall be full—when their tears shall have involved heaven itself in darkness—*doubtless* a God of justice will awaken to their distress, and by diffusing a light and liberality among their oppressors, or, at length, by his *exterminating thunder*, manifest his attention to the things of this world, and that they are not left to the guidance of a blind fatality."—*Notes on Virginia.*

In the same connection, Mr. Jefferson describes the whole commerce between master and slave to be "the most unremitting *despotism* on the one part and degrading submissions on the other"—and affirms that the child of a slaveholding parent—"*nursed, educated, and daily exercised in tyranny*, can not but be stamped by it with odious peculiarities."—Can these "*educated tyrants*" understand and guard *civil liberty?* Can they be the rulers of a *free People?*

William Pinckney.—"For my own part, I have no hope that the stream of *general liberty* will flow forever, unpolluted, through the mire of *partial bondage*, or that those who have been habituated to lord it over others, will not, in time, become base enough to let others lord it over them. If they resist, it will be the struggle of *pride and selfishness*, not of principle."—*Speech in the Maryland House of Delegates*, 1789.

John Jay.—"Till America comes into this measure [the abolition of *slavery*] her prayers to Heaven" (i. e. for *liberty*) "will be *impious*. This is a strong expression, but it is just."—"I believe God governs the world, and I believe it to be a maxim in his, as in our court, that he who asks for justice must do it."—*Letter from Spain*, 1780.

The doctrine of Jefferson, of Jay, and of Pinckney, is evidently this:—Liberty *can not be secure in a country where there is slavery:*—they are opposites and can not harmonize.

One or the other must give place to its antagonist. God will not give liberty to a people who permit slavery.

If it be said, of any government, that *it can not abolish slavery*, in the country over which it is established, the meaning of the statement, if it have any intelligible meaning, must be, that such government can not "secure the blessings of liberty" to the country over which it is established. If the abolition of slavery be left wholly to "moral suasion," then the preservation of liberty is left wholly to moral suasion, and the functions of civil government cease. No arrangements, influences, or machinery of any kind, can do more to diffuse light, than they can to dispel darkness, to secure warmth, than to prevent cold, to "secure liberty," than to abolish slavery. Can any truisms be more self-evident than these?

If the whole question of *slavery* is left, exclusively, to the State Governments, then the whole question of *liberty* is left exclusively to the State Governments, and the National Government becomes a mere nose of wax—the fifth wheel to the coach, a nullity, by which no man can be bound.

Further testimony might be cited, from prominent statesmen and literary gentlemen, by no means obnoxious to the charge of prejudice against slavery, or under zeal for its abolition. Speeches in Congress, and in State Conventions, Governors' Messages, Resolutions of State Legislatures, &c., &c., abound in varied expressions and implications of the sentiment that *the continuance of slavery involves its virtual extension, in some form, over the mass of the laboring population of the country at large*. In the same connection with arguments for the perpetuity of slavery, and demands for the suppression of efforts for its overthrow, it has been urged, from these high sources, that "those who earn their daily bread by the sweat of their brows can never enter into political affairs,"* that "the relation between the capitalist and the laborer, in the South is kinder and more productive of genuine attachment, than exists between the same classes, any where else on the globe,"† that "gentlemen" (Representatives in Congress) "from the North, must not start at this truth," that "*one class*" of citizens must "practically and substantially *own another class*, in some shape or form"‡ —that while the non-slaveholding States "it is hoped" will be prompt to suppress "Anti-Slavery Societies"—"the sober and considerate portion of the citizens of the non-slavehold-

* Benjamin Watkins Leigh, Speech in Virginia Convention for amending the Constitution, 1829.—† Prof. Dew, of William and Mary's College, Va.—‡ Hon. Mr. Pickens, Speech in Congress, Jan. 1836.

ing States will reflect whether the form in which slavery exists in the South, is not one modification of the universal condition of laborers," who "with few exceptions," have as little "volition or agency, in the distribution of wealth" as the slaves of the South—that the system of labor among freemen, is "not less oppressive" than that among slaves*—that "the South has less trouble with their slaves, than the North has with her free laborers"†—that where menial services "are performed, by members of the political community, a dangerous element is introduced into the body politic"—that the slaves if emancipated "bleached or unbleached"—and admitted to "an equal participation of our political privileges" would exhibit "a revolting spectacle"—that "slavery supercedes the necessity of an order of nobility"—and is "the corner stone of our republican edifice"—that "it will be fortunate for the non-slaveholding States, if they are not, in less than a quarter of a century, driven to the adoption of a similar institution, or take refuge from robbery and anarchy, under a military despotism,"‡—that the abolition of slavery, "gradual or immediate" is rendered impossible by "*the absolute want of power on the part of the General Government*," and by "the immense amount of capital which is invested in slave property"—that the "dogma" is "visionary—which holds that negro slaves can not be the subject of property" —that "*that is* property which the law declares *to be* property"—that "two hundred years have sanctioned and sanctified negro slaves to be property"—that "the moment the incontestible fact is admitted that negro slaves are property, the law of moveable property attaches itself to them, and *secures the right* of carrying them from one State to another, where they are recognized as property"—that "the consequences of abolishing slavery, were the measure possible, would be such that "abolitionists themselves would shrink back in dismay and horror" from them—that "*in the progress of time, some one hundred and fifty or two hundred years hence, but few vestiges of the* BLACK *race will remain, among* OUR posterity"‖ so that the interminable slavery, so long "sanctioned and sanctified"—so "incontestibly" identified with the right of "moveable property," thus securing perpetuity to the domestic slave trade, and with the whole North, (under the law of '93) as its hunting ground, without jury trial,—a slavery and a slave-trade which *the General Government has*

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* Hon. John C. Calhoun's Mail Report, U. S. Senate, Feb. 1836, and accepted by that body.—† Mr. Hammond, of South Carolina, Speech in Congress.—‡ Message of Gov. McDuffie to the Legislature of South Carolina, and approved and acted upon by that body.—‖ Speech of Hon. Henry Clay, in the U. S. Senate, Feb. 7, 1839.

no power to terminate—and which none of the State Legislatures, (by the late decision of the Supreme Court of the United States)* has a right to exclude from the field of their jurisdiction—is *a slavery and a slave-trade* to be perpetuated "AMONG OUR POSTERITY"—"*with but* FEW VESTIGES *of the* BLACK *race*" remaining!

No Middle Ground.

Let the *assumed premises* of Mr. Clay be conceded to him, (viz:) the right of property in man, under American Constitutional Law—the legality of slavery in America, including the inter State slave trade, under the Constitution of the United States, and the "absolute want of power on the part of the General Government" to abolish this American slavery and slave-trade, and all the rest of his argument, with its tremendous conclusion, follows of course, unless a ray of hope might reach us from the good will and pleasure of the legislatures of the slave States themselves.†

Not less logical and demonstrative are the conclusions of Gov. McDuffie's Message, paradoxical and extravagant as they may seem, unless we start, in the outset of the argument, upon the *opposite principle*, and affirm that American Constitutional Law regards "all men" "bleached or unbleached" as "created equal, and endowed by their Creator with certain inalienable rights—life, liberty and the pursuit of happiness."—On any other assumption, it is manifest that our Government regards men as *unequal:* and if this be true, it is evident that *condition* and not *color*, (according to both Clay and McDuffie,) must ultimately become the sole distinction between the privileged and the servile.

Every government is based upon *some* principle—is based upon either *one or the other of two* principles—the principle of human *equality;* or the principle of human *inequality*, of dominition and subjection. If the American Government is *not* based upon the principle of human *equality*, then it *is*

* Decision in the case of Prigg. vs. the State of Pennsylvania.

†It seems not quite certain that a little variation and extension of the same argument would not almost equally remove from the legislatures of the slave States themselves, the power of abolishing slavery—a position not unfrequently held, at the South.—The "incontestible" right of "moveable property" so long "sanctioned and sanctified" would present very grave claims, in the eyes of statesmen who hold the views of Mr. Clay. And then, if the Constitution of the United States, "the supreme law of the land"—"guaranties" that same right of property, and may ride, rough shod, over the legislatures of the non-slaveholding States, and convert the whole North into the hunting ground of the slaveholder, to make that "guaranty" good, how will it be made to appear that the same "guaranty" does not extend over all the States in the Union, and forbid Southern legislatures to do what Northern legislatures may not? Suppose Maryland should pass an act abolishing slavery.—Would not the same decision of the United States Court, that now prevents Pennsylvania from executing its act of abolition, prevent Maryland, likewise, from doing the same thing?

based upon the principle of human *inequality;* and the degradation of the laboring masses, whom *color* can not identify, becomes, (as McDuffie hath it,) the corner stone of the entire structure. Those who contend for the "guaranties" and the "compromises of the Constitution" in favor of slavery, or its toleration, contend (whether they know it or not) for the pith and essence of the very doctrine, so offensive to many, when stated in bold and forcible language of the Governor and Legislature of South Carolina.

ILLUSTRATIVE POLITICS OF THE COUNTRY—STATE ACTION.

The *meaning* of the question before us, is thus definitely fixed. On its *magnitude*, the reader may reflect at his leisure. On that topic we can not enlarge. Suffice it to suggest, that both the meaning and the magnitude of the question have their amplest illustrations in the past and passing political history of the country at large.

The legislative action of the slaveholding States looks distinctly and marches steadily to the *suppression of general liberty*, both within their own boundaries, and throughout the States of the Union.

In direct violation of their own State Constitutions, freedom of speech and of the press are proscribed, and in especial reference to all attempted promulgation of the doctrine of *human rights!*

IN LOUISIANA—"If any person shall use any language, from the *bar, bench, stage, or pulpit, or any other place*" [including halls of legislation] "or hold any *conversation* having a TENDENCY to promote discontent among FREE colored people, or insubordination among slaves, he may be imprisoned at hard labor, not less than three, nor more than twenty-one years, or he may suffer DEATH *at the discretion of the Court.*"

Similar legislation obtains in Mississippi, North Carolina, Georgia, Virginia, &c. And these laws are not a dead letter. A member of Congress from Tennessee,* in a letter to a Northern Editor, requested him to send him no papers of a certain description, (and consisting of a Review of a Report of Mr. Calhoun, in the United States Senate,) after he should have returned home to his constituents, because his receiving it through the mails, and reading it, at his family fire-side, would be a penitentiary offense.

Legislatures and Governors of slaveholding States have offered large rewards for the abduction of free citizens of the non-slaveholding States, and carrying them to the South, to be tried and punished, *there*, for advocating human rights, in their *own States*, and no legislature of a non-slaveholding

* Mr. Hunter.

State, has, in any way, noticed the insult!—Demands have been made on the Governors of non-slaveholding States, for the delivery of such offenders, and also on their legislatures, for penal enactments against free speech at home. In direct violation of the Constitution of the United States, free citizens of other States, sojourning in the slave States, are liable, if *colored*, to be seized, imprisoned, and sold into slavery—or (whether white or colored) if maintaining the "self-evident truths" of the Declaration of Independence, to be punished with *death*.

Action of the Federal Government.

The history of the action of the Federal Government, under all our successive Presidents, is strikingly illustrative of our position, that the Constitution must either be construed *against* slavery, or in its *favor*—against SLAVERY or against GENERAL FREEDOM.

To those who differ from me on this great question, I freely yield all the benefits of a concession of the fact that *hitherto*, the Constitution has been construed, in opposition to the views I maintain:—has been construed, in favor of the "compromise" and the "guaranty" of domestic slavery—has been thus construed by the Legislative, Executive, and Judicial authorities of the nation. But along with this concession, I shall insist that *the hitherto reigning construction*, as exemplified in the steady action of the Federal Government, in all its departments, is a construction that makes the *security of slavery*, and not the *security of liberty* (the profession of the Preamble) the grand and paramount object of the National Government—is a construction that has led all the rival statesmen, administrations, and parties who have held it, to pursue steadily, amid all their otherwise conflicting measures and fluctuating policy, the aggrandizement of SLAVERY at the expense of LIBERTY; a construction that has led the Legislature, the Executive, and the Judiciary, to do the bidding of the SLAVE POWER, at whatever expense, or hazard, to the interests, the reputation, or the liberties of the People.

For the *facts* involved in this declaration, it were sufficient to cite the reader to—"*A View of the Action of the Federal Government, in behalf of Slavery, by* WILLIAM JAY," and to those new developments of the same action, which, every year, and almost every month, are opening before our eyes. For a philosophical *solution* of those phenomena, it is enough to bear in mind the construction of the Federal Constitution

that looks in the *very same direction*, and to consider that those who *think* the Constitution to be in favor of slavery, will be very likely to *administer* it in favor of slavery, whatever may be said against the justice or the policy or their measures. If the common construction be the *correct* one, we have no remedy for the policy of the last half century, but a *different Constitution*, or an adminsitration that will *disregard* the provisions of the existing one ; a consideration to which our attention has not unfrequently been called by those who object to the *ballot box* as a means of removing slavery.

Admitting the common construction to be correct, *submission* or *revolution* are the only alternatives left to us ; and *both* in turn are the probable, the almost inevitable lot of this People. The total loss of our liberties will come first, and the bloody recovery of them afterwards. Our destiny is before us, and we must float on, till it is fulfilled. Be it so, that we live under a National Government, at war with our dearest rights, a Government that taxes us for the acquisition of new territory, whereon to plant new batteries against our liberties—that moulds our naturalization laws in the manner best adapted to enslave native freemen—that shapes its ever fluctuating political economy, so as may best, for the time being, divert the avails of free labor from the laborer to the lordling—that employs the expensive diplomacy of the nation to its own infamy—that pretends to prohibit the African slave-trade, but winks at its successful prosecution—that plots against the liberties of South America and of Cuba, lest the infection of their liberty should enable the North American States to become truly free—that with indecent eagerness hastens to take by the hand, and hug to its bosom, nay, to incorporate with itself, the piratical despotism of Texas, at the cost of a war with Mexico ; while it refuses, for forty years, at a sacrifice of well known public benefits, to recognize the independence of liberated Hayti—that authorizes slavery, the slave-trade, and the public sale of freemen, on the national hearth-stone, the home and the habitation of its own " exclusive" jurisdiction —that defines the condition of the American slave, by denying to him even the Asiatic right of petition, then declares that right forfeited by all the believers in inalienable human rights, and next to be held by the entire American people, only by Presidential permission—that by its law of 1793, for the arrest of alleged fugitives from slavery, annuls the trial by jury, and (by recent decision of its Supreme Court)

suspends the freedom or the chattelhood of its Supreme Judges themselves, *not* upon "due process of law," but upon the good pleasure of the slaveholder that may choose to claim them, as slaves. *Be it so* that all this decisive and even fatal action *against general liberty*, is the action of our own National Government in which we have confided, to "*secure the blessings of liberty*"—*what then?* If the foundation principles of the Federal Government *require* all this to be done, as they undoubtedly do, if "the Constitution guaranties slavery"—or if they *permit* all this to be done, as they certainly do, if, by a "compromise" they permit slavery—then we have either to *get rid of* SUCH *a Federal Government, or relinquish our* LIBERTIES.

The wit of man may be challenged to devise another alternative. AMERICAN CONSTITUTIONAL LAW is either against slavery or in favor of it. *Both*, at the same time, or *neither*, it can not be. One or the other, it *is*, and *must* be. If it tolerates *partial slavery*, it betrays and sacrifices *general freedom*:—for general freedom and partial slavery, can no longer, even dubiously contest the supremacy. At this very moment, liberty trembles, and is ready to fall, if she may be said even now to exist. Under the present Constitution, is there any hope for her? We proceed to the discussion of THAT QUESTION.

CHAPTER II.

"STRICT CONSTRUCTION."

THE CONSTITUTION OF 1787–9. *Considered on the Principle of Strict Construction.*

SECTION I.

THE CLAIMS OF SLAVERY.

Modern date of the supposed compromise—Remarkable process of proving it—Strict construction defined—"Persons held to service and labor"—Apportionment of representatives and direct taxes—Migration and importation—Suppression of insurrection—Protection against domestic violence—Reserved rights of the States.

THE CLAIM—ITS CHRONOLOGY—ITS TEXTURE AND ITS TACTICS.

Those who claim the "compromises" and the "guaranties" of the Constitution in support of slavery, do so on the ground of the provisions of the Constitution of the United States, ormed by a Convention held for that purpose, in 1787, rat-

ified by the requisite proportion of the States, in 1787–8, and going into operation by the organization of the present Federal Government, under it, in 1789. And this claim is seldom made out, from the provisions of that instrument itself to the satisfaction of the claimants themselves, without lugging in, what is claimed to be the "implied understanding" of the supposed parties to the "compact"—an understanding, without which, it is assumed, the assent of the slave States to the Constitution, could not have been gained.

But beyond the Constitution of 1787–9 and the attendant circumstances of its formation and adoption, the claimants are not accustomed to adventure. We have never heard the old Articles of Confederation cited in proof that any such compact, compromise, guaranty, or understanding, lay at the bottom of that arrangement, or even existed, at that date, in any form. The Declaration of Independence, the principles of Common Law, the inherent, matter-of-fact, unwritten Constitution, the organic frame work and structure of free government, itself, of civil government, of any sort, have never, so far as we know, been attempted to be pressed into the service of the "peculiar institution" of the South. Nothing of this. Its Magna Charta of Runny Meade, its Genesis, so far as any *national* "compact"—"compromise"—"guaranty," or "understanding" are concerned, claims no earlier date than 1787–9.

It is a matter of some importance to note distinctly, this fact, as it shows to how narrow a chronological field, the claim in question, is confined. We became an independent *nation* —ONE nation—"*United States*," in 1776, but no man claims any *national* compact, compromise, guaranty, or understanding, in favor of slavery, till 1787–9.

Another remarkable feature of this claim, is its inability to shape itself into any tolerable conformity with even its own *beau ideal*, or model of a seemly or valid claim, by the process of a consistent and continued adherence to *any* recognized *principle of interpretation* by which, on all *other* questions, the meaning of this national document, in particular, or of any other similar instrument, is supposed to be ascertainable.

The claimants of these "compromises, compacts, guaranties, and understandings," never think of making out their claim by taking the well known rule of *strict construction*, and adhering to *that* rule, till the claim is logically proved. Nor, on the other hand, will they venture the experiment of taking the rival principle of interpretation according to the

scope, design, leading object, or "*spirit* of the Constitution" and making out their claim in harmonious accordance with *that* principle.

Instead of this, they never fail to present an argument made up of a motley patch-work, of which "strict construction" is claimed to have furnished *some* of the shreds, too tattered and thin indeed to hang together, or shut out the sun-light, without a plentiful lining of supposed *intentions*, yet carefully excluding the *grand* intention to "*secure liberty*," from coming into the interpretation, lest "that which is put in, to fill it up, take from the garment, and the rent be made worse." The argument commonly begins by insisting that the *minutest specifications* of the document shall be strictly and literally complied with, that not one iota or tittle of the detailed provisions of the Constitution shall be suffered to fail, though the known and openly avowed *end and object, the main purpose, and spirit* of the instrument, which gave it existence, should be nullified, should suffer defeat, and be relinquished. But in order to make out the needed construction of the *specific provision itself*, in the absence of the appropriate *words* and *phrases* to express the pretended "compact, compromise, and guaranty"—(yes !—in the presence of words positively *adverse*, in their strict, literal import, to any expression of that kind,) resort is instantly had to *supposed intentions and "understandings"* to eke out the construction ! The *declared* intent to "SECURE LIBERTY" shall have no power to help construe, to qualify, much less to set aside, a technicality that can read, by the literal import, to favor the "peculiar institution" of slavery. The *dead-letter* construction shall be held omnipotent, here. But let it be shown that the "words of the bond" do not happen, exactly, to specify, to describe, much less to *name* the very "peculiar" thing claimed to be guarantied or compromised, behold ! the dead-letter construction is repudiated, at once, and *supposed* and *conjectural* intentions to SECURE SLAVERY start up, in its place, and became Constitutional Law!*

A STANDING POINT, AND AN UMPIRE.

Against this backing and filing, this fluctuating, sliding process of constitutional interpretation, we record our pro-

* When it is remembered that our most popular "*expounders of the Constitution*" have been accustomed to reason in this manner—That Presidents' Messages, Acts of Congress and Judicial decisions have been framed upon the fragile basis of such adroit and nimble gyrations, dignified with the name of expositions and palmed off upon a confiding people for Constitutional Law, we may safely infer that a *true* exposition of the Constitution, *whatever* it may be must conflict with the now *prevalent* one.—Mr. Clay's Speech in the Senate, Pinckney's, Pattou's, and Calhoun's Reports, the Act of 1793, and the late decision of the Supreme Court, furnish instances in abundance of these deceptive manœuvres.

test, in the outset. The "peculiar" claim, with all the amiabilities and attractives attached to it, shall have its fair hearing, in Court. Certainly it shall. But, like all other claimants, it must define its position, and retain it, long enough to have its merits properly canvassed and adjudicated. It may choose the "*spirit of the Constitution*" as a rule of interpretation, or the rule of "*strict construction*," as it judges most prudent. But, having made its own selection, it must content itself to remain in the *same Court*, till the verdict is rendered. Even more than all this, we shall concede to it : for the truth can afford to be liberal. The claim of constitutional slavery shall have leave to urge its merits upon *both* the principles of interpretation, "strict construction," *first*, and "spirit of the Constitution" *afterwards*, not flying from the one to the other in the same plea, but trying its cause in both Courts, in succession. If the claim can be sustained, on the principle of "strict construction" alone let it have the benefit of the verdict. But if it finds itself defeated on *that* ground *then* let it appeal to the "spirit of the Constitution" and see whether it can get the judgment reversed. But let it not pack its jury from both Courts, at the same trial. Nothing can be fairer than this challenge. On this basis we proceed. And as the claimants always *commence* their suit, at the Court of "strict construction" we will meet them there, first. Let them not dodge, till "strict construction" shall have pronounced judgment. They may *then*, file their appeal, if they shall have occasion.

"Persons held to Service and Labor."

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor ; but shall be delivered up on claim of the party to whom such service or labor may be due."—*Constitution, Art. IV, Section* 2, *Clause* 3.

Who, unacquainted with the facts that have taken place, with the past and daily passing history of this country, would ever have conceived that *these words* described the case of a fugitive slave, and required his delivery to the slaveholder? No one! Yet such is the *claim* set up, under this clause! But "strict construction" allows no reference to past or passing events, for a key to the meaning of the document. It insists that the *words* of the instrument, the *literal words*, according to their commonly received and authorized *import*, and *nothing but* the words, shall be allowed to tell us the meaning of the Constitution. It rules the Historian and the News Journalist out of the witness box,

and installs the Grammarian and the Lexicographer in their stead. To *their* testimony we will now attend.

Mr. Grammarian—Please to "*parse*" for the Court and Jury, this third clause of the second section of the fourth article of the Constitution of the United States. And tell us, by the rules of grammar, *who it is*, that "*shall be delivered up*," &c., under this clause.

Mr. Grammarian parses the sentence, and thus, gravely responds—"According to the principles of grammar, as taught by Murray, Smith, Kirkham, &c., it appears that—"*No person* held to service or labor in one State, under the laws thereof, escaping into another * * * * * *shall be delivered up* on claim of the party to whom such service or labor may be due!"*

Very satisfactory testimony, for the claimant, to be sure, but "*strict construction*" records the testimony of Mr. Grammarian, nevertheless! As counsel for the fugitive, I can afford to pass it over, in my plea. I have evidence enough without it, but on the principles of "strict construction" I have a right to use it, if I please. . *Why not?*—By bringing his suit into the Court of "STRICT CONSTRUCTION" the *claimant* insists that the Grammar and the Lexicon, the *dead-letter* of the record, however subsersive of *equity*, or of the *meaning intended* by the framers of the instrument, shall govern the decision to be made. Why then, may I not, *take him at his word?*

We will dismiss the Grammarian, and summon the Lexicographer to the stand. We wish to know the *meaning of the words* employed in this clause. The enslaver claims that the word "*person*" means *slave*. To test this claim we must know the meaning of the word "*person*" and the meaning of the word "*slave*" and see how they correspond. Noah Webster knows the meaning of words.—Mr. Webster—what is the meaning of the word "person?" Please to define it, for the Court and Jury.

ANSWER.—"*Person.* An individual human being, consisting of body and *soul*. A man, woman, or child, *considered as opposed to* THINGS, or distinct from them."—*Webster's Dictionary.*

The testimony is noted down by the Court.—Mr. Webster retires.—"The peculiar" meaning of the word *slave*, as understood by those who "best understand" the very "peculiar" thing, must next be ascertained. No non-slaveholding

* This extraordinary *syntax* of the clause is noticed by Alvan Stewart, Esq., in his able argument, (vide "Liberty Press," January 4, 1844.)

Lexicographer (more than a non-slaveholding President) is to be trusted, here. A Yankee Dictionary may best define the meaning of the word "*person.*" We must look farther South for a full and clear definition of the word "*slave.*"—The claimant has a witness in Court. Having come to claim a *slave*, he has brought with him the SLAVE CODE of the State from which the slave has "*escaped*," in order to inform the Court, precisely, what it is—"*under* the laws thereof" that is claimed. The Court directs the witness to be sworn. He is "a southern man with southern principles." In every thing relating to the "peculiar institution" he is erudite, authoritative, and "sound to the core." And moreover, though a southern man, he is a "*white* man," and without a tinge of African blood:—a competent witness of course. He must be heard with "peculiar" respect. The Sheriff and Constables, will preserve "silence in Court" while he testifies—*Hush!*

"Slaves shall be deemed, sold, taken, reputed, and adjudged *in law*, to be CHATTELS PERSONAL, in the hands of their owners and possessors, and their executors, administrators and assigns, *to all intents, constructions and purposes whatsoever.*"—*Law of South Carolina. 2 Brev. Dig.* 229; *Prince's Digest*, 446, *&c.*

"In case the *personal property* of a ward, shall consist of specific ARTICLES, such as *slaves*, working *beasts*, animals of any kind, *stock*, *furniture*, *plates*, *books*, and so forth, * * * * the Court may at any time, pass an order for the *sale* thereof."—*Act of Maryland*, 1798, *Chap. ci. &c.*

"Slaves shall always be considered and reputed *real estate.*"—*Louisiana. Act of January*, 1806.

"In Kentucky by the law of descents, they are considered *real estate*," but "are liable AS CHATTELS, to be sold by the master, at his pleasure, and may be taken in execution for the payment of his debts."—2 *Litt. and Sni. Digest.*

"The *cardinal principle* of slavery, that the slave is NOT to be ranked among *sentient beings*, but among THINGS, is an article of property, a chattel personal, obtains as undoubted law, in all of these States."—*Stroud. page* 23.

"It is plain that the dominion of the master is as unlimited as that which is tolerated by the laws of any civilized country, in relation to *brute animals, to quadrupeds*, to use the words of the civil law."—*Stroud. page* 24.

"Slaves can make *no contract*"—"A slave can not even contract matrimony."—*Stroud. page* 61.

"Two hundred years have sanctified negro slaves, as *property*"—"That *is* property which the law *makes* property"—"The moment the incontestible fact is admitted that negro slaves are property, *the law of moveable property* attaches itself to them, and secures the right of carrying them from one State to another, where they are recognized as property."—*Speech of Henry Clay, in the United States Senate, February* 7, 1839.

This testimony too, if taken down by the Court, and "STRICT CONSTRUCTION" wipes its spectacles for the comparison. How reads the record? "We have it in evidence that the word '*person*' denotes a human being, a man, wo-

man, or child, considered as *opposed to* THINGS, and *distinct from them.* We have it in evidence, likewise, that the word '*slave*' means a *chattel personal*, A THING, and NOT a sentient being. The testimony then, is, that a '*person*' can not be a *thing*; and that a '*slave*' IS a thing. The word 'person' in the Constitution, therefore, can not mean a slave. The claimant, by proving the being claimed, under this clause to be a *slave* has proved that he is *not* a *person*, and therefore can not be recovered under this clause." So reasons "STRICT CONSTRUCTION" and prepares to render judgment, without further waste of time. By joint request of both the parties, the Court consents, however, to a consideration of other matters, before pronouncing a decision.

Waiving the syntactical suicide of the clause under review, and passing from the definition of the words "person" and "slave," we take up the clause again, and read it over carefully, to discover, if we can, what impression it conveys, *as a whole*, of the condition of the being or "person" it describes. And the result is, first, that the condition of a slave is *not* therein described; second, that a certain condition, familiarly known among us, *is* described; and third, that the condition thus described, is the condition of one who, by the description, *can not possibly be, or could not have been a slave.*

FIRST :—The *condition* of the slave is *not* described at all, in the clause. The appropriate English *word*, slave, universally used, especially in this country, to express that condition, is carefully *excluded!* How is this, if the design was to specify and to describe that "peculiar" condition? The phrase "held to service or labor" does not describe the legal condition of the slave. He is held as "*property*," "*goods and chattels personal*;" but the law knows nothing, and has nothing to say or to prescribe, concerning his service or uselessness, concerning his labor or his idleness. The highest prized slaves, those commanding incomparably the largest sums of money in the market, are "held," bought, and sold, for far other purposes than *labor*, purposes altogether incompatible *with* it! "Escaping" is an awkward word, at best, to be applied to property, to a chattel, to a thing. Self locomotive property may be described as "straying," but *not* as "escaping" from its owner. "*Discharged* from service or labor" is a phrase never used to describe either the manumission of a slave, or his release from labor. The phrase supposes a *legal obligation* to labor which can not rest on the slave. The *law* requires no labor

of him, whatever his *master* may do. There are sometimes laws ostensibly *limiting* the amount of labor to be imposed upon slaves, as there are laws to prohibit the abusive treatment of cattle, but such laws never speak of their "*discharge*" from any portion of their labor. If such laws should go so far as to *forbid*, in certain specific cases, the putting of *any* labor upon aged, decrepit, or diseased slaves, the prohibition would be no emancipation, nor would it be called a "*discharge from* labor." "On *claim* of the party to whom such service or labor may be *due*."—Nothing can be legally *due* from a slave to his master: from "goods and chattels personal" to their "owners and possessors." "The slave can make no contract" and hence, nothing can be "*due*" from him. Master and slave can not be creditor and debtor.—The *owner* has no legal "*claim*" upon his beast for labor. He can not "sue him at the law" for default of "service," nor can the law enforce the payment, or "discharge" from it. All such language is inapplicable to the condition of the slave. If the slave master has proved the estray "chattel" to *be* his chattel, his slave, then he has proved, not merely that he is no "*person*" but that nothing can be "*due*" from him, and that the clause of the Constitution now under review, does not apply to the case. If this clause of the Constitution "*does* apply to slaves, it *emancipates them*, for it proceeds upon the basis of *self ownership* in the person held to labor, and makes its provisions applicable only to a debtor in law, who, in order to *owe* the creditor, must *own* himself."* And this appears from a consideration of the other points proposed.

SECOND:—The clause *does* describe a condition, familiarly known among us:—the condition of "persons," as "distinct from *things*"—persons who are "held to service or labor under the laws of the State" wherein they reside—persons "from whom such service or labor may be *due*" because they *may* have contracted to perform it, or because due to parents or guardians; persons whom the laws, on proper grounds, *may* "discharge" from the labor that may be wrongfully demanded of them, persons who may wish to "escape" from the obligations believed to be resting on them, persons whom the authorities of one State may appropriately "deliver up on the claim of the party (in another State) to whom

* Tract No. 5, New England Anti-Slavery Tract Association, on "Persons held to Service, Fugitive Slaves," &c., by THEODORE D. WELD. If the reader wishes to see the argument amplified, which is here briefly condensed, chiefly from that work, he should read it entire. On the "*strict construction*" principle, its positions will not be easily overturned.

such service or labor may be *due*." Such is the condition of the apprentice, the minor, the contractor of job work, the debtor, who is held to service or labor by the terms of his own voluntary agreement.*

THIRD :—The condition so accurately and minutely described in the clause, is a condition which can not, by any possibility, be predicable of the slave, who is held as property, who can make no contract, who can never become a creditor, and from whom nothing can be "*due*."

Should it be claimed, as perhaps it may be, that in a disputed or doubtful case, the principle of "strict construction" does not preclude a reference to the history of the times, the general understanding, &c., &c., to gather light upon the meaning of a legal instrument, the answer is at hand. No references of the kind proposed, *on the principle of "strict construction"* (for in *that* Court we are litigating, *now*) "can avail to set aside the *plain terms* in which a clause of the Constitution is expressed." Aside from the faulty *syntax* of the clause first noticed, no *terms* could more plainly express the condition of the "persons" specified and described; a condition incompatible with that of the slave. "Strict construction" will not permit the supposition that the Constitution *means* a slave, when its framers, whatever their intentions might be, took such special care *not to say* that they meant it, but actually said *the contrary*. "Strict construction" maintains that even if "a statute, or a clause of a constitution, may, in certain cases, be construed *beyond* the letter," it "must never be construed *against* the letter." "Strict construction" affirms that "a construction repugnant to the express words of the law can not hold—and further, that where the words are unambiguous and explicit, the construction must not only *not conflict* with it, but must be *based upon it*, and still further, that Courts are not at liberty to carry out what they may *suppose* to be the design of the law, to put upon its provisions a construction repugnant to its words, even though the consequence of not doing it should be *defeat* to the object of the law." "Strict construction" holds that "with the *policy* of a clause in the Constitution, Judges have nothing to do." "Strict construction"

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*This view of the subject is moreover confirmed, and additional force is given to the idea that the peculiar condition of the *slave* is not described in the clause, when we remember that no allusion is made to *the color* commonly supposed to be the badge of the slave, and of those that may be claimed as such. This remark can be neutralized only by pleading that the common construction of the clause, embodied in the Act of 1793, and in the decision of the Supreme Court, *does* contemplate the enslavement of WHITES!

rules that the Court has no authority "to *presume* the intentions of the framers, but to *collect* them from the words, taken in their *ordinary import*;" and "strict construction" cites the authorities that follow.

"Lord Tanterton, the late distinguished Chief Justice of the Court of King's Bench, in a recent judgment, says:—'Our *decision* may, perhaps, in this case, operate to *defeat the object* of the statute, but it is better to abide by this consequence than to put upon it a construction not warranted by the act, in order to give effect to what we may *suppose* to be the intentions of the legislature.'

"So, in the case of 'Notley vs. Buck,' 8 B. and C. 164, that eminent Judge says:—'The *words* may probably go beyond the intention, but if they do, it rests with the legislature to make an alteration. The duty of the Court is only to construe and give effect to the provision.'"

Imbedded in principles and precedents like these, what can "STRICT CONSTRUCTION" do, but decide *against* the claimant of a fugitive slave, under the third clause of the second section of the fourth article of the Constitution of the United States?

If it still be pleaded, in arrest of judgment that "the clause is fairly open to two interpretations, and that therefore resort must be had to history, to contemporaneous exposition," &c., &c., the plea is inadmissable, *here*, because it is in effect, a motion to take the cause *out* of the Court of "strict construction" and try it at that *other* Court to which the claimant will be allowed an appeal, if defeated, here. But inasmuch as *other* important questions touching the "peculiar institution" and its claims on other portions of the Constitution are about to be litigated in this Court, the judgment in this particular case will be suspended, for further deliberation.

APPORTIONMENT OF REPRESENTATIVES AND DIRECT TAXES.

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons," &c.—*U. S. Const. Art. I, Sect.* 2. *Clause* 3.

And who, among the *uninitiated*, could have divined that either a "compromise" or a "guaranty" of slavery, was bound up in *these* words? Nothing is *said* about *slavery* or *slaves*. And since nothing is *said*, how can "strict construction" admit the plea that something was *intended*? And that that something was (what is not mentioned in the Constitution) a "guaranty" or a "compromise" in its favor?

Allowing one moment for the sake of the argument, that the word "persons" *did* mean "slaves" and that the States

holding few or no slaves consented to an arrangement by which three-fifths of the slaves were to be counted, in the apportionment of representatives and direct taxes. What then? How is the "compromise" or the "guaranty" of *slavery* made out? "Strict construction" can infer nothing of the kind. It can only see a *bargain* about the payment of *money*, and the right to choose a given number of *representatives*—a barter trade, in which the Yankee States intended to benefit their *pockets* at the expense of a portion of their *political power*—and got the worst of the bargain, as other Esaus have done, before them. Further than this, "strict construction" could not go, granting all the premises claimed.

But "STRICT CONSTRUCTION" will never consent to the premises. It will by no means admit, tnat when the Constitution speaks of "persons"—of human beings, in distinction from *things*, it means "goods and chattels personal, to all intents, constructions, and purposes whatsoever,"—of "THINGS" in distinction from "sentient beings." We pass to another topic.

"MIGRATION OR IMPORTATION."

"The migration or importation of such persons as any of *the States now existing* shall think proper to admit, shall not be prohibited by Congress, prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." —*U. S. Const. Art. I, Sect.* 9, *Clause* 1.

What "compromise" or "guaranty" of "the peculiar institution" have we, here? For the sake of the argument, we will, in the first place, suppose, that "the migration or importation of such persons," &c. means "the migration and importation of" *slaves*. What does "STRICT CONSTRUCTION" see, in this clause of the Constitution, then?—It notices,

1. That it applies only to the States "*now existing*" that is, when the Constitution was formed, adopted or put into actual operation. Kentucky, Tennessee, Louisiana, Alabama, Mississippi, Arkansas, Missouri, a majority of the present slaveholding States, as well as Florida are not included, and never were, and never can be, in the provisions of *this* clause; and whatever, of "compromise" or of "guaranty" the "peculiar institution" in the six *other* slave States may claim, or may have claimed, under it, the seven States above mentioned never have had, and never can have, any part or lot in the matter. Congress may, at any time, do, in respect *to those States* and to this *Territory* whatever it might have done, had

the clause never have been written. To *them*, it brings neither "guaranty" or "compromise." It notices,

2. That the year one thousand eight hundred and eight, having gone by, thirty-six years ago, whatever of "compromise" or of "guaranty" the clause may have given to some of the original States, for a time, the period of its operation has, long since elapsed, and the present generation has no more to do with it, than with the edicts of Cæsar Augustus.* It notices,

3. That the clause, even when in force, in respect to the original States, did not, on the principle of "strict construction" restrain Congress from "establishing justice" and "securing the blessings of liberty" by the general abolition of slavery. On *that* subject, the clause under consideration, had nothing to say, and accordingly *said* nothing.

So that if it could be true that the word "*persons*" here used, meant *slaves*, it could not be true, on the principles of "strict construction" that the system of slavery derives any "guaranty" from it, or its existence "compromised" or permitted by it.

But back of all this lies the self-evident truth that "*persons*" are human beings, with "souls" as well as bodies—and that consequently, they are not "chattels personal" and "*things*." The dictionaries tell us this. "Strict construction" decides according to *the meaning of the words*—and the word "*persons*" can not mean "*slaves*." "Strict construction" accordingly reads this clause as applicable to the ingress or egress of "human beings with natural rights"—"a man, woman, or child, considered as opposed to *things* or *distinct from* them." These may be English, French, Dutch, Irish, Malay, Hottentot, Hindoo, or African. But they can not be *slaves*.

Before dismissing this topic, it may be worth while to notice a remarkable inconsistency of those who hold the opposite doctrine. If it be true, as they insist, that the migration and importation of *slaves* is described in this clause, and that, prior to the year 1808, Congress had no power to prohibit their ingress, by migration or importation, into "any of the States," &c., that should "think proper to admit" them —then it follows that the famous law of 1793, for the seizure and return of fugitive slaves, migrating into States willing

*If the claimant, by his own construction and his own showing has had his "bond" satisfied, to the very letter—if he has had his cake, and eat it up, a generation ago, for what honest object does he come into Court, whining about his "bond" and "guaranty" and "compromise," now? Was the "compromise" all on one side? Is the twenty years' respite never to run out? Constitutional expositors who urge "compromises" and "guaranties" after this fashion, must either be very dull of apprehension themselves, or presume largely on the stupidity of others.

to receive them, was palpably unconstitutional and premature.* Not less so, I may add, upon the construction that makes "persons" to mean human beings, in distinction from things, from chattels, and slaves.

Suppression of Insurrection.

"Congress shall have power" "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions."—*United States Constitution, Article I, Section* 8, *Clause* 14.

It is claimed that by this clause, the National Government is bound to assist in quelling an outbreak of refractory slaves, whenever they may refuse to work, or whenever they may forcibly resist their masters.

What says a "*strict constructionist*" of the Constitution, to this claim?

"Congress shall *have power* to" do a specific thing. Does that mean that Congress *shall* do that specific thing? Or does it only mean that Congress shall *act according to its discretion*, in the matter?

"Congress shall *have power*" (under this same section) "to lay and collect taxes, duties, imposts"—"to borrow money on the credit of the United States"—"to establish uniform laws on the subject of bankruptcies throughout the United States"—"to declare war, grant letters of marque and reprisal"—"to raise and support armies"—"to provide for, and maintain a navy," &c. &c. &c. Does this language mean that Congress *shall* do all or any of the things specified? Or that it shall do this on demand of any particular portion of the country, irrespective of its own best judgment of the "*justice*" of the measure, and the interests of the *country at large?* To ask questions like these, is to answer them.

"To execute the *laws of the Union.*" But do "the laws of the Union" enforce the labor of slaves, or legalize the power of the masters? By what clause of the Constitution are such powers conferred?

"To suppress *insurrections* and repel invasions." And what is an insurrection? "Strict construction" inquires, at every step, into the *meaning of the words*, (in their ordinary import) which the Constitution employs. We must call Noah Webster again, to the stand.

"*Insurrection.* A rising *against civil or political authority;* the open and active opposition of a number of persons to the *execution of law*, in a

* See address of Alvan Stewart, Esq. And here we have another illustration of the fidelity and acumen with which the Constitution has been expounded, hitherto, by its official guardians!

City or State. It is equivalent to *sedition*, except that sedition expresses a less extensive rising of citizens. It differs from *rebellion*, for the latter expresses a revolt, or attempt to overthrow the government, to establish a different one, or to place the country under another jurisdiction. It differs from *mutiny*, as it respects the *civil or political government*, whereas a mutiny is open opposition to law in the army or navy."—*Webster's Dictionary.*

An "Insurgent:"—Is "A PERSON who rises in opposition to *civil or political authority;* one who openly and actively resists the *execution of laws.* An *insurgent* differs from a *rebel.* The *insurgent* opposes the execution of a particular *law or laws;* the *rebel* attempts to overthrow or change the government, or he revolts, and attempts to place the country under another jurisdiction. All *rebels* are *insurgents*, but all insurgents are not *rebels.*"—*Ib.*

Admitting, for the sake of the argument (what is not true) that a slave can be a "person" in the eye of the law, it is evident that the refusal of a slave to obey his overseer or owner—and that his forcible resistence to their persons or to their authority can not amount to an *insurrection*—does not constitute him an *insurgent.* The authority of the master over the slave is neither "*civil*" nor "*political authority.*" The slaveholder is not, by virtue of his slaveholding, a *legislator* or a *magistrate.* Neither the Constitution of the United States nor that of any one of the slave States, directly confers legislative or executive power upon the individual *slaveholder*, as such. When a slave refuses to obey a command of his master, he does not refuse to *obey a law*, either of the State or the Nation. When he resists the enforcement of his master's demands, such resistance is not "opposition to *the execution of law.*" If a thousand or a million of slaves should do the same thing, at the same time, it would not alter the nature of the act. In doing it, they would resist only their masters. They would not resist "the execution of law"—they would not rise against "civil or political authority." And consequently they would be guilty of no *insurrection.* The masters, in such a case, might bring their several actions against the slaves at Justice's Courts, for "assault and battery," if the slaves could be accounted in law, "*persons.*" But since this is not the case, the thing is never done.*

It is often claimed, on behalf of the "domestic institution of slavery," that it is part and parcel of the family relation, or at any rate, so nearly resembles it, that it may be judged

* I do not forget that the enactments of the slave States provide for the punishment of the slaves as *criminals.* But I contend that those enactments are in flat contradiction of the code that holds them as *goods and chattels personal.* If the *one* is valid law, the *other can not* be, and any impartial Court would so decide. The moment a slave is *legally* indicted for crime, that moment he is legally declared a person, and not a chattel; in other words, he is *legally emancipated.*

of by the same rules. The slave is compared with the hired servant, the apprentice, the minor child, and sometimes, even with the wife. And the authority of the slaveholder and overseer is called "paternal" and represented as similar to the authority of the "boss" workman, the employer, the master of the apprentice, the guardian, the parent, the husband.

Let this clause of the Constitution be read in the light of such representations. Here are hired servants that decline to do the bidding of their employers. Here are bound apprentices that will neither make shoes, nor tan leather, nor ply the needle, nor wield the broad-axe, nor swing the sledge-hammer. Here are minor children that throw down their hoes in the corn field, or their scythes in the meadow. Here are house-wives that demur against the drudgeries of "domestic" cookery, that will neither bake or boil pot, will neither churn, wash, nor iron; at least without the stipulated compensation of new gowns, caps, and ribbons, beyond the convenience or good pleasure of their husbands. High words ensue, and words ripen into blows. The contagion spreads from family to family, from village to village, from State to State — confusion reigns, industry is paralized, broom-sticks are brandished, and broken ribs and bloody noses complete the scene. Now for the remedy. "Congress shall have power, to provide for calling forth the militia *to execute the laws of the Union, suppress insurrections,* and *repel invasions!*"

If irony be detected in the picture, it is only because there was absurdity in the thing that presented itself for the portrait.

On the principle of "strict construction" this clause of the Constitution, so far from making it *obligatory* on Congress to employ the military power of the Nation to enforce the labor of slaves, or to interfere in the "domestic" quarrels of servants and their masters by "calling forth the militia," *does not even invest Congress with the power* to do any such thing.

Those who hold the opposite doctrine, are nevertheless wont to proclaim loudly, the very *limited* authority of the Federal Government, its incompetency to intermeddle with local concerns; and they magnify greatly, the untouched independency, and reserved powers of the separate States. All this is urged, in special reference to the existence of slavery. But in this very "peculiar domestic" concern of keeping the slaves quiet, their theory is reversed! The

Federal power is every thing, and State power is unable to punish murder, nay, even to restrain assault and battery, without *the national arm.* A kitchen quarrel between maid and mistress, an altercation between a slave-driver and his gang, a street brawl, blows between a night-walker and a patrol, a chase after a runaway chambermaid or ostler, attendance on a religious meeting after nine o'clock or after sunset, or by Sabbath sunlight, without a written pass; the preaching of a sable colored laborer to his fellows, the keeping of a school to teach the alphabet, the unseasonable visit of a lover to his mistress, of a husband to a wife, or of a mother to her offspring; the refusal to labor without wages, or to do the unlawful bidding of the debauchee or the drunkard—all these, or either one of them, are gravely held, by constitutional lawyers, to be fit occasions for calling out the *national militia*—all these, or either one of them, if persisted in, and by a sufficient number of persons to embarrass or endanger the slaveholders are held to be equivalent to *an insurrection!*

Let it be noted that the power of Congress to *suppress* "insurrection" carries along with it, the power of Congress to *define* "insurrection"—to say in what an insurrection consists, and in what it does *not* consist. And "strict construction" insists that Congress shall frame this definition in accordance with the "*ordinary import of the words*"—in accordance with the testimony of the accredited lexicographers of the language. And where shall we find better authority than that of Noah Webster? Or a respectable definition at variance with the one quoted from him?

And when Congress shall have defined the word "*insurrection*" in direct reference to proposed action in the case of refractory slaves, it will have dipped pretty deeply into the "delicate question" of the legality of American Slavery!

Before dismissing entirely the definition of the word "*insurrection*," employed in the Constitution, it may be well to see how nearly we can approximate towards the discovery of a definition furnished by the Constitution itself. The Constitution is particular, in its definition of the word "*treason*," and Noah Webster may help us to compare the words "*treason*" and "*insurrection*."

"*Treason* against the United States shall consist *only* in *levying war against them*, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court."—*United States Constitution, Article III, Section* 3, *Clause* 1.

"*Treason*, is the highest crime, of a civil nature, of which a man can be guilty. In general, it is the offense of attempting to overthrow the government of the State to which the offender owes allegiance, or, of betraying the State into the hands of a foreign power."—*Webster's Dictionary.*

If there be a difference between the Dictionary and the Constitution, it lies in this; that the Constitution limits the "general" meaning of the Dictionary, and restricts it to the particular overt acts specified—levying war—adhering to enemies:—whereas the more "general" definition might include *other* acts of the same nature and design. By the same rule, a constitutional definition of "*insurrection*"—if a definition had been furnished, would have *restricted* rather than *enlarged*, the definition of the Dictionary, confining "insurrection" to the specific act of *bearing arms* against the civil or political authority, and the execution of the laws.

The difference pointed out by Webster between *insurrection* and *rebellion*, is substantially the same as is noticed in comparing his definitions of "insurrection" and of "treason." *Insurrection* is the less comprehensive act. It may consist in an *armed resistance* against the execution of a *particular law* of the State, without directly attempting the more comprehensive enterprise of overturning *the State itself*, and establishing *another government* over it.

The nearest *literal adhesion* to the words of the Constitution that the case admits of, conducts us, therefore, to the same definition (substantially) of the word *insurrection*, that is furnished by Webster, only more carefully restricted, less liable to be extended to a variety of *indefinite acts*.

In no view we can take, will "*strict construction*" permit us to apply the clause of the Constitution now under review, to the case of *refractory slaves*:—not even if slaves were to be considered and dealt with, as "*persons*."

But as this is not the case—as slaves are "deemed, sold, taken, reputed and adjudged, in law, to be CHATTELS PERSONAL"—"to all intents, constructions and purposes whatsoever"—it is manifestly beyond the power of irony or satire to overpaint the picture of absurdity and ridiculousness, wrapped up in the claim, under this clause, of a constitutional pledge, guaranty, or even *authority* or *warrant*, for the employment of the *national militia* to keep the slaves in subjection, to enforce their *labor*, or to *protect their owners against them*.

"That is property which the law makes property." And "Congress shall have power" to "*suppress insurrections*" of "property" against its owners!—or "against the execution

of law!" "Specific articles, such as slaves, working beasts, animals of any kind" decline performing the tasks their owners desire of them. They frisk out of their traces, run back, refuse to draw, throw up their heels; they crush the feet of their Balaam-eyed riders against a wall, they crouch, lie down, and refuse to rise again. And behold!—"Congress shall have power to" provide for the emergency by "calling forth the militia, *to execute the laws of the Union!*" "Specific articles" of property, in conspiracy with "Real Estate," aspire to become *owners* of "specific articles" and holders of "real estate" themselves. "Goods and Chattels" demur against being held as goods and chattels any longer, desirous of possessing "goods and chattels" in their turn. *Constitutional Law*, putting on its wig, and mounting its wool-sack, decides it to be a manifest case of "*insurrection*" against the State! The contest between "Goods and Chattels" and their "owners and possessors" waxes warm and comes to blows. "Goods and Chattels" are likely to become an over-match for their owners. "Working animals" meditate deeds of blood and slaughter among their possessors. Horns and heels are already bringing muskets and cutlasses into requisition. "Congress shall have power" to protect the owners against their property—to "suppress *insurrections* and repel *invasions!*" To wage a war of extirmination against "Goods and Chattels" and "Real Estate" for the benefit of their "owners and possessors, and their heirs, executors, administrators and assigns!" Such is a specimen of the jargon resulting from the construction of the Constitution against which we contend.

Protection against Domestic Violence.

But another section of the Constitution, or rather a mutilated fragment of it, is quoted to the same effect. The entire section reads thus:

"The United States shall guaranty to every State in the Union, a republican form of government, and shall protect each of them from invasion; and on application of the legislature, or of the executive, (when the legislature can not be convened,) against domestic violence."

The first part of this section will receive particular attention, in another place. The provision looks in quite another direction than the federal guaranty of slavery; a circumstance sufficiently obvious to every one; and accordingly we never find it quoted in its proper connection, or quoted at all, by those who plead the constitutional compromises and guaranties we are now considering.

The United States shall, in certain contingencies specified, protect each of the States from invasion, and from *domestic violence*. What is the "domestic violence" intended? The connection leads us to conceive of that violence as naturally resulting from attempts to subvert "a republican form of government" and establish other usages in their stead. At all events, it is evident that the section must not be construed into a right or obligation, on the part of the United States, to lend its aid and authority to the *support of anti-republican* laws and usages in the States. For that would be to quote the provision in opposition to its own express terms. And consequently the provision can not be construed as authorizing or requiring the United States to assist in supporting slavery in any of the States, for *slavery* is known to be the most *anti-republican* thing that can be conceived. Slavery and republicanism are opposites, and the common use of language places the terms in opposition to each other. And "strict construction" never permits a departure from the plain meaning of the words.

This view is further confirmed by a consideration of the ordinary use and proper meaning of the terms "domestic violence."

"*Domestic.* Belonging to the house or home; pertaining to one's place of residence and to the family. * * * * * * Pertaining to a nation, considered as a family, or to one's own country; intestine, and not foreign." *Webster's Dictionary.*

"*Violence.* 1. Physical force, strength of action or motion. 2. Moral force; vehemence. 3. Outrage, unjust force, crimes of all kinds. 4. Eagerness, vehemence. 5. Injury, infringement. 6. Injury, hurt. 7. Ravishment, rape. To *do violence to*, or *on*; to attack, to murder. *To do violence to*, to outrage, to force, to injure."—*Ib.*

"Domestic violence" therefore, in the *bad* senses of the word violence, (which the Constitution evidently intended,) expresses *nothing like* the refusal of a slave to labor, or his demanding, asserting or even defending his natural and inalienable rights—his resisting the outrages and aggressions of others, upon those rights. On the other hand, the definition of "domestic violence" *does* very accurately describe the forcible chattel enslavement of men, women, and children; the treatment that slaves inevitably receive, under the slave system, the outrages, injuries, and crimes, notoriously and constantly perpetrated upon them; and especially and emphatically does it describe the systematic scourging, confinement, fettering, hunting with blood-hounds, shooting down with rifles by individuals, and by volunteer bands of unauthorized and armed men, of fugitive or refractory labor-

ers—thus filling the "house, the home, the place of residence"—"the nation considered as a family"—"one's own country" with the worst species of "violence"—with "intestine" disorder and commotion. The graphic descriptions of Mr. Jefferson correspond with these observations. He speaks of slavery as an act of *violence* when he affirms that the liberties of the enslaved "are not to be VIOLATED, but with the Divine wrath"—and he characterizes this violence as a "DOMESTIC" violence, in both the senses we have quoted from Webster. "The parent storms, the child looks on, catches the lineaments of wrath, puts in the same airs, in the circle of smaller slaves, gives loose to the worst of passions, and thus nursed, educated, and daily trained in tyranny, can not but be stamped by it, with odious peculiarities." Thus the "house, the home, the place of residence" is filled with "domestic violence." And not only so—"the nation considered as a family," our "own country" according to Mr. Jefferson, is filled with the same domestic violence. "With what execration should the statesman be loaded, who, *permitting* one half the citizens to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the *amor patræ* of the other."

No other "*domestic violence*" in this country, can bear a comparison with *slavery*. "*Strict construction*" will never consent that the Constitution shall be understood to sanction the national enforcement of "DOMESTIC SLAVERY" under plea of protection, *against* "DOMESTIC VIOLENCE!"

Further than this, we insist not, at present. In another place we shall inquire whether the Constitution does not require the *suppression*, by the United States, of this "domestic violence."

Reserved rights of the States.

The right of the States to tolerate and sustain slavery, is not unfrequently grounded on the *reserved* rights of the States, in conformity with the Constitution of the United States; viz:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."—*Amendments, Article* 10.

"*The* powers"—*What* powers? All possible and impossible, conceivable and inconceivable powers?—The power to make black white, and white black?—to reduce immor-

tal souls to chattels?—to transform lawlessness into law? to construct a rectangular triangle whose three angles shall not be equal to two right angles?

To hear some men talk about the "reserved rights of the States" one would think that those rights included the right of omnipotence; or rather, the right to do what omnipotence itself can not do.

"*Are reserved.*" Notice the words. "*Reserved*" not originated:—"*Reserved*" not "guarantied."

"Strict construction" will insist upon a rigid adherence, to the *words*, in their obvious and customary meaning, as applicable to the matter in hand.

"*Power.*" "The right of governing, or actual government"—"legal authority, warrant"—"right, privilege."—*Webster's Dictionary.*

The "reserved RIGHTS of the States" can not include reserved WRONGS!—The powers "reserved to the States or to the people" are *rightful* powers—*rightful authority.*

It is *not* provided, nor affirmed, in this article of amendments to the Constitution that the *States* or the people MAY DO, whatever the Congress and the United States may *not* do! There are many, very many things, that *neither* people, States, Congress, *nor* United States, may lawfully, or *constitutionally* do. As for example, neither People, nor State Governments, nor Congress, nor United States, may lawfully, or constitutionally, select every tenth man in a township, or tenth man in a hundred, throughout the country, and confiscate their property, *pro bono publico*, and then colonize them to Liberia, to "get rid of them." They may not string up to the yard arm, every Irish emigrant that reaches the country, because he is not a "Native American." They may not seize upon Joseph Story, or Henry Clay, or Martin Van Buren, and drag them to unpaid labor in the rice swamps of Carolina, without jury trial, without charge of a crime. They may not seize upon every man with a hair lip or with red hair, or with black skin and crisped hair, and do the same thing with them. *Nor may they suffer it to be done by others.* And though it should be proved that among "the powers delegated to the United States by the Constitution," and "prohibited by it to the States" no mention whatever is made of the power or authority to do or not to do the things that have been described—it would not follow from the 10th article of Amendments to the Constitution, that either "the States or the People" have a right to perpetrate or to tolerate such crimes. It would not follow that their participancy in

or toleration, or legislative sanction of such crimes was CONSTITUTIONAL. *It would not follow that Congress, and the United States possess no rightful and constitutional authority to suppress such criminal practices.* Thus far, at least, a "strict construction" of the article, by the proper *meaning of the words* may conduct us. But this is not all.

It is not to be *taken for granted*, without scrutiny, (as is commonly done) that the power of abolishing slavery is *not* delegated to the United States, by the Constitution. Nor is it to be thus taken for granted that the practice and legislative sanction of slavery is *not* by the National Constitution, prohibited to the States. If the opposite of the commonly received doctrine, on these points, should be found true, the tenth article of the amendments to the Constitution of the United States will, *itself*, have to be "reserved to the States respectively, or to the People" for some worthier, some more dignified and republican *use* than that of attesting the *constitutional right* of baby stealing, and woman whipping, and selling boys and girls at auction, along with tallow candles, by the pound!

SECTION II.

THE CLAIMS OF LIBERTY.

The Preamble—Union justice, domestic tranquility, common defense, general welfare, *liberty*—Powers of Congress—Power over commerce—A "Republican form of Government," (definitions of a republic by various authorities)—Security of liberty, "due process of law"—Slavery in the Territories and Federal District—The Constitution and the District of Columbia—Restrictions on State power—Inhibition of bills of attainder, laws impairing the obligation of contracts, titles of nobility, (aristocracies, feudalism) making war, troops in time of peace—Immunities of citizens in each State—The summing up—Shylock and his pound of flesh—The Conclusion.

Having patiently examined those portions of the Constitution that are claimed in support of SLAVERY, we may now be permitted to inquire what portions of the document, if any, may be regarded as friendly to LIBERTY. It will be remembered that we are still litigating our cause in the Court of "STRICT CONSTRUCTION"—where a final disposal of the claims of *slavery* upon the Constitution is deferred, until the claims of *liberty* can be first examined. At the Court of "strict construction" it is a well understood axiom that a document in favor of *slavery* can not be in favor of *liberty*; and that a document in favor of *liberty* can not be in favor of *slavery:* that to establish the *one* claim is to overthrow the

other. "Strict construction" studies, and sticks to, the dictionary; it goes by the *meaning of the words*, and hence the axiom that has been quoted, since the words "liberty" and "slavery" are opposite terms.

THE PREAMBLE.

"We, the people of the United States, in order to form a more perfect *union*, establish JUSTICE, ensure *domestic tranquility*, provide for the *common defense*, promote the *general welfare*, and secure the *blessings* of LIBERTY to ourselves and our *posterity*, do ordain and establish this Constitution for the United States of America."

"Strict construction" always holds the *object* and *design* of a decent and respectable document to be what it *declares itself* to be. At least it does this, until *it* can be proved, by the laws of "strict construction" to declare *an untruth*, and then it no longer *remains* respectable or trust-worthy. Nothing further need or can be done with it, in that case, but to proclaim its true character. While the Constitution of 1787–9 claims either *respect or authority*, it must be construed to mean and intend what *it says* it means and intends.

And what *does* it say it means and intends? What meaning and intent do the words it employs, (in their natural and ordinary acceptation,) convey? The Constitution *says* it means the following things:—

1. "To form a more *perfect union*." Then it does *not* mean to "permit one half the citizens to trample on the rights of the other—to transform those into despots, and these into enemies"—as is done by *slavery*.

2. "To *establish justice*." Then it does *not* mean to "guaranty" or tolerate *injustice*. It means to abolish and overthrow it, and there can be no greater injustice than *slavery*.

3. "To *ensure domestic tranquility*." Then it does not mean to guaranty or permit "*domestic violence*." It means to forbid and restrain it. There is no "domestic violence" equal to *slavery*. And nothing like slavery conflicts with "domestic tranquility."

4. "To provide for the *common defense*." Then it does not mean to permit a common warfare upon the *defenseless*. It does not mean to defend the *aggressors*. It does not mean to make "compromise" with a system that renders a "common defense" against foreign invasion impracticable, by "destroying the morals of the one part, and the *amor patræ* of the other." It means of course, to abolish *slavery*, since, by no other method, can the "common defense" be provided for, or made possible.

5. "To promote the *general welfare*." Then it can not mean to promote or "guaranty" the known and admitted *enemy* of the "general welfare"—*slavery*. It can not mean to lend its aid in crushing the laboring, the producing class, in half the States of the Republic; as it would do, if it make a compromise with *slavery*.

6. "To *secure* the blessings of LIBERTY to ourselves, and our *posterity*." Then it means to overthrow the deadly antagonist of liberty, to wit, SLAVERY.

These results are as certain as it is that the meaning or intent of any document is to be ascertained by its own ample, clear, express, unambiguous, and distinct *language*. In other words, they are as certain as it is that "strict construction" or any other sort of construction, can determine the meaning of the Constitution. "Strict construction" must pronounce judgment in favor of liberty and against slavery, or decide that the Court has no jurisdiction—that "strict construction" has no right to a seat on the wool-sack.

POWERS OF CONGRESS.

But has the Constitution clothed Congress with the authority and *power* to carry into execution the *meaning and intent* of the Constitution itself? Let us see.

"The Congress shall have power"—"to *make all laws* which shall be *necessary* and proper, for *carrying into execution* the foregoing powers, and all *other* powers, vested by this Constitution in the *Government of the United States*, or in any department or officer thereof."—*Art. I, Sect. 8, Sect. 17.*

And so the Constitution itself gives an explicit and direct affirmative answer, to the question. "Strict construction" has nothing to do but to record and re-echo it.

But suppose the legislation of *Congress* in *accordance* with the Constitution of the United States, should conflict with *State* legislation, the question may be asked—"Could such State legislation, in that case, be legally and constitutionally set aside, as null and void? Could the Federal Courts so decide, and render such State legislation of non-effect? And must the State authorities acquiesce?" There is a provision in the Constitution containing a direct and explicit answer to *this* question likewise.

"*This Constitution*, and the *laws* of the United States which shall be made *in pursuance thereof*, and all treaties which shall be made under the authority of the United States, shall be THE SUPREME LAW OF THE LAND, and the judges *in every State* shall be bound thereby, ANY THING in the CONSTITUTION or LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING."

Whatever, therefore, in the action of any of the States, conflicts with the Constitution of the United States; whatever conflicts with the laws of Congress, made in *accordance* with, and "in *pursuance*" of, the grand objects of that Constitution, is unconstitutional, illegal, null, and void. It can not have the *authority of law.*

Just as certain, therefore, as it is that the Constitution of the United States was "ordained" to "*establish* JUSTICE" "and SECURE ... *the blessings* of LIBERTY *to ourselves and our* POSTERITY"—just as certain as it is that the slave codes and enactments of the slave States establish *injustice*, and render the liberties of ourselves and our posterity *insecure*—just so certain as it is that the Constitution has conferred on Congress "power to make all laws which shall be necessary and proper for carrying into execution" the express and declared *objects* of the Constitution itself; just so certain is it (on the principles of "*strict construction*") that a law of Congress, abolishing slavery in the States where it exists, would be the "*Supreme law of the land*," and the judges "in every State" would "be bound thereby, *any thing* in the Constitution or laws of *any State* to the contrary notwithstanding." The plain, direct and express *words* of the Constitution of the United States, *literally taken*, say precisely this thing; and there is no escape from it, without appealing FROM the *words* of the Constitution to the supposed *intentions* of the framers—and this is exactly what "STRICT CONSTRUCTION" can not permit.

But this, it may be said, is all "*in the general.*" And some persons appear unable to distinguish between *generalities* and *non-entities.* Their vision is microscopic. The more ample the dimensions of the object, the less capable they are of perceiving it. Had the Constitution specified some very minute matter in which either "union," "justic," "domestic tranquility," the "common defense," "the general welfare," or "the blessings of liberty," were involved, the meaning would have been palpable enough. Perhaps even as large an object as chattel slavery itself, might have been seen, had it but been singled out and separated from all similar things, of the same class, and called by its *technical name.* (Such men can not see that *slavery* is forbidden in the Bible, though they understand that *extortion*, and using service *without wages* are there forbidden!) But *Constitutions* are not commonly adapted or intended to be substitutes for the *statute book.* And because the Constitution employs terms which describe and include slavery along with

similar usages, it is difficult to make these persons see that it describes or means *any thing at all!* *Their* "strict construction" would be equivalent to *no* construction, since they allow nothing to be contained in the document, that is not expressed by a technical term. 'Twere well nigh useless to reason with such. From *generalities* we will pass to such *particulars* as we may be able to glean.

Power over Commerce.

"The Congress shall have power" "*to regulate commerce* with foreign nations, *and among the several States*, and with the Indian tribes."—*U. S. Const. Art. I. Sect.* 3. *Clause* 3.

Slaves, in law, are "goods and chattels personal." As such they are articles of commerce. And it is held and pleaded by the slaveholder that, "that *is* property which *the law declares to be* property." The whole question, then, of the chattelhood and commerce in slaves, is in the hands of the *law making power*, wherever that power is lodged. Nobody pretends that slaves could be held and sold as property *without* specific enactment of the legislative authorities. The right to hold and sell slaves as chattels is not claimed to be a natural, original, and inherent right. It rests solely on the *statute*.

Well, then, the Constitution of the United States as above quoted, provides that this whole power "*to regulate commerce*," to "declare what *is* property," and what is *not* property, to say what shall be or shall not be bought and sold, and if so, under what restrictions, is vested in the *Congress of the United States*, and being thus vested, it is *denied* to the legislatures of the several States, *so far forth*, as "commerce with foreign nations, and among the several States, and with the Indian tribes," is concerned. *In all this field of commerce*, "that *is* property which the law" of Congress "declares *to be* property"—if the commercial law maxims of the slave code are to be our guide—that is, if slaves are to be deemed chattels at all!

Thus far, in the Court of "strict construction," all is "plain sailing" enough. How all this is to operate, or what bearing it is to have upon the tenure upon which slave property is held in certain States of this Union, "strict construction" has no occasion now to inquire. A little interlocutory, lobby conversation, however, on this point, may be here indulged.

[If Henry Clay has taken the right view of the subject (and it is not easy to see what other view any claimant of

slave property can take) it is manifest that, *in the exercise of their constitutional* power, under this clause, the Congress of the United States may strike a deep, if not a fatal blow at the very root of all slave property at the South. For, as an argument against such congressional action, Mr. Clay insists that the *chattelship of the slave can not be separated from the right to carry him from State to State, as an article of merchandise.* The same *principle* would apply to the *foreign* slave-trade (though the immediate and direct practical operation of its abolition might be less serious,) that is to say, the power that was competent to the abolition of the *slave-trade*, domestic or foreign; was competent likewise to the abolition of *slavery itself*, since both rested on the *same basis*, and the *one* was involved in the *other*, and depended *upon* it. On some such considerations, doubtless, was founded the general belief and assumption, at the time the present Constitution was adopted, that the abolition of the foreign slave-*trade* was to involve the abolition of *slavery*. The now ascertained impracticability of putting down the slave-trade, on the high seas, and in our own commercial cities, in the presence of slavery, is only another illustration of Mr. Clay's doctrine that the right of *slave chattelship* and the right of carrying on the *slave-trade* are one and indivisable! These are his words:—

"The moment the incontestible fact is admitted that negro slaves are property, the law of movable property attaches itself to them, and secures the right of carrying them from one State to another, where they are recognized as property."—*Speech in the Senate, February 7*, 1339.

In view of the constitutional provision now under consideration, as a data of reasoning, yet retaining Mr. Clay's identification of *chattelship* with *commerce*, we may paraphraze and improve his logical process on this wise.

'The moment the incontestible fact is admitted, that the Congress of the United States are by express provision of the Constitution, clothed with the power of "regulating commerce among foreign nations, and among the several States, and with the Indian tribes"—*that* moment the constitutional power of control over slave property in the several States, attaches itself to the Congress, and secures to that body the right to 'declare what is property,' and what, *as being* property, may lawfully be carried from one State to another.'

If there be any flaw in this logic, it must lie in its adoption of Mr. Clay's doctrine, that the *chattelship* and the *commerce* of slaves can not be separated from each other.]

But all this estimate of consequences, is mere lobby talk, with which the Court of "strict construction" has nothing, on the present occasion, to do. The simple question before the Court, is the power of Congress over the foreign and domestic slave *traffic*, and that question resolves itself into the question whether slaves are, in the eye of law, subjects of *commerce* at all. If they are, that commerce, with all other commerce, within the limits described, is under congressional control. So "strict construction" must decide, without regard to the bearing the decision may have on the tenure of slave property in general.

An objection has been raised, on the ground that the power to "*regulate* commerce" is not the power to *annihilate* commerce. The objection is groundless for two reasons.

In the first place, the prohibition of traffic in a particular commodity, and between certain specified localities or countries, is *not* an annihilation of commerce, but only a regulation of it. The making of the traffic in certain commodities contraband, does not annihilate commerce. The tariff of 1816, designed and operating to exclude the cotton fabrics of India, was not an annihilation of commerce.

But, in the second place, it has been decided by the Federal Courts that the power to regulate commerce *does* carry along with it the power to destroy, to prohibit, to annihilate commerce.* By the long embargo, under Mr. Jefferson's administration, not only foreign commerce, but coast-wise commerce between the States, and even the fisheries, were expressly prohibited and substantially destroyed. And when some merchants who had been prosecuted for a breach of the embargo law, defended themselves by contesting the constitutionality of that law, and on this same plea that "the power to regulate commerce is not the power to annihilate commerce," no plea nor evidence was offered, on the part of the Government, to disprove the alleged fact, that commerce was annihilated by the embargo. The plea in Court against the defendants, was, that the power to regulate commerce, being an indefinite and unrestricted power, carried, of necessity, along with it the discretionary power, to prohibit all commerce. The plea was offered as a "strict construction" plea. The Court adopted it as such, declaring that they must be bound by the *words* and not by the *consequen-*

* How well the strict letter of the Constitution agrees with Mr. Clay's identification of chattelship with commerce; how the Constitution, or how Mr. Clay's doctrine would bear upon the free trade and tariff question—or which view ought to prevail, we are not now concerned to inquire. We have only to construe the Constitution by its own words.

ces of the Constitution. Judgment was accordingly given against the defendants, and the embargo law was sustained.

To the uninitiated, it may appear somewhat remarkable that the same persons who cite the clause concerning "migration and importation" in illustration of the "compromises of the Constitution" in regard to slavery, (inasmuch as the power of prohibiting the slave-trade, was withheld as they say, from Congress, for twenty years)—should nevertheless contradict their own conclusions, by denying that now, after the twenty years are expired, the Congress possesses any such power? It was under *their own* construction of the Constitution, that the slave-trade was first tolerated, against the then prevailing sentiment of the country, till 1808, and under the same construction, it was then abolished, to a certain extent; and now that a further exercise of the *same* power is invoked, to complete the prohibition commenced in 1808 the constitutional power is denied on the ground that the clause does not touch slavery, at all! But "commerce with foreign nations" and commerce "among* the several States" are placed on precisely the same footing, in the clause before us, under which the foreign slave-trade was abolished. In this we have another specimen of the trust-worthiness of the constitutional expositions, on the subject of slavery, that have *hitherto prevailed!*

We dismiss this topic by inviting attention to a dilemma, of which the opponents of our doctrine may select which horn they prefer.

If the slave States persist in holding the slaves as "goods and chattels personal" the *law* of "goods and chattels personal" attaches itself to them, Constitutional Law and the laws of Congress not excepted, securing to Congress, under this clause of the Constitution, the right of exercising the same powers over *slave* property and *slave* commerce, as over any *other* property and commerce. But the moment the slave States determine and affirm that slaves are *not* "goods and chattels personal—to all intents, constructions, and purposes whatsoever"—*that moment* every slave in those States is emanci-

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* "*Among* the several States." Does this mean the same as *between* "the several States?" The latter phrase would better indicate exclusively a commerce between the citizens of *different* States. "*Among*" would *seem* to comprehend likewise a traffic "among" the citizens of the *same* States, and this would authorize Congress to prohibit the buying and selling of slaves entirely even "among" the residents of the same neighborhood or village. Noah Webster tells us that "*among*" means "*mixed* or *mingled with*"—as well as "conjoined or associated with, or making a part of the number"—whereas "*between*" may "denote intermediate space, without regard to distance." Were we *pushed* for an exposition, or desirous of *pushing* the principle of "strict construction" we might make something of this distinction. But let it pass.

pated, and becomes a freeman—his chattelship disappears and he becomes a *man* in *law* as well as in *fact*.

"A REPUBLICAN FORM OF GOVERNMENT."

We have incidentally adverted, already to the Constitutional provision that "*the United States shall guaranty* to every State in the Union, a republican form of government.*"—*Art.* 4, *Sect.* 4. It is time to consider, more directly, this provision. What shall we understand by the word "*guaranty?*"

"*Guaranty.* 1. To warrant; to make sure, to undertake or engage that another person shall perform what he has stipulated. 2. To undertake to secure to another, at all events. 3. To indemnify; to save harmless."—*Webster's Dictionary.*

The United States, then, will "warrant," will "make sure," "to every State in this Union," and to all the inhabitants thereof, "a republican form of government." The United States "undertake or engage" to see to it that *other persons besides* those directly wielding the *Federal Government*, that the persons charged with the affairs of the *State* Governments "shall perform what they have stipulated," by maintaining "a republican form of government." The United States "undertake to secure, AT ALL EVENTS," "to every State in the Union" the government described. The United States will "indemnify," will "save harmless" from all attempts, in any *direction*, or from any *quarter*, to subvert such a government. Whatever is incompatible with a republican government, in *any* of "the States of this Union," "the United States" have bound themselves to *abolish and suppress.*

What then, are we to understand, by "a republican form of government?"

"*Republic.* 1. A commonwealth; a State in which the exercise of the *sovereign power* is lodged in representatives elected by *the people.* 2. Common interest: the public." (*obs.*) &c.—*Webster's Dictionary.*

"*Republican.* 1. Pertaining to a republic; consisting of a commonwealth. 2. Consonant to the *principles* of a republic."—*Ib.*

If slavery be contrary "to the *principles* of a republic," then slavery is anti-republican, and of course the United States have guarantied, to every State in the Union, an exemption from slavery. But the well "known principles of a republic" are—that "all men are created equal, and are endowed by their Creator with certain inalienable rights, among which are life, liberty and the pursuit of happiness."

* It would seem that the framers of the Constitution were not unacquainted with the English word "*guaranty*," and that when they *meant* to "guaranty" any thing, they could distinctly and unequivocally *say* so.

Any government not in accordance with these "principles" is not a republican government.

"The sovereign power" of a State is *not* "lodged in representatives elected by THE PEOPLE," in States where one fourth, one third, or one half of "*the people*" are held in slavery. There is no "common interest," no "commonwealth" in States where "one half of the citizens" are "permitted" by legislative enactments, "to trample on the rights of the other"—to "transform those into despots, and these into enemies."

We are not going beyond the *strict letter* of the Constitution, the *meaning of the words* it employs, when we say this. Our construction is not only *not beyond* the literal import of the words, but is *based directly upon them*. "Strict construction" can make nothing more and nothing less *out* of them.

But in seeking to ascertain the *literal meaning of the words*, we are not *confined* to the dictionaries in common use. We may appeal to any other good *literary authority* for the meaning of words, just as the compilers of dictionaries cite standard writers. If the Constitution or any other legal instrument uses scientific terms, we must go to the masters of science for the meaning of them. If it uses Common Law terms or phrases, we must go to the volumes of Common Law to find out the meaning of them. If it employs words in common use among statesmen, civilians, and moralists, we must go to eminent statesmen, civilians, and moralists, for a definition of the terms. And those of the same age and nation, other things being equal, will be the best authority for ascertaining the ordinary import of the words. This reference to the current literature of a people or of their language, to their public documents and archives (such as our National Declaration of Independence,) or to approved writers and eminent statesmen, to ascertain the ordinary import of the *language* or the *words*, of a written document, like the Constitution, is not only permitted but required by the law of "*strict construction*," which confines us to the meaning of the words, and *therefore* sets us at work to *ascertain*, by all the means in our power, their *precise import*. Such a reference is *not* to be confounded with an appeal to (perhaps) the *same* literature, statesmen, and writers, for the purpose of ascertaining, (otherwise than by the meaning of their words,) the *intentions*, and *designs*, the *motives* and the *policy* of the framers of the Constitution, or instrument, under examination. With these explanations, we cite some further definitions of "a republican form of government."

We have so far anticipated this topic as to cite the definition contained in the Declaration of Independence. To the same point we might also quote the "Bills of Rights," "Declarations," Preambles, Constitutions, &c. &c., of the different States, which form so prominent a feature of the political literature of the age and nation in which our Federal Constitution was drafted. But we forbear. They are too voluminous for convenience—too well known and too unequivocal for dispute. They all look to the establishment of republican government, and they all lay the foundation of such government in the doctrine that all men are born equal, and possess an inalienable right to liberty. They make the very pith and essence of a republican government to consist in the protection and security of those rights. The political literature of America knows of no other republicanism than that which recognizes and professedly secures such rights.

To quote to proper advantage, MR. JEFFERSON's definition of a republican government, would be to transcribe a great part of his writings. A brief epitome of it we have in his Declaration of Independence. We have it likewise in such propositions as the following:

"1. The true *foundation* of REPUBLICAN GOVERNMENT is the *equal* rights of EVERY CITIZEN, in his *person* and *property*, and in their *management*."

This is equivalent to a flat denial that any government can be a "republican government" that is not FOUNDED upon "the equal rights of EVERY CITIZEN," &c. And in his Notes on Virginia, the same writer has described the legislation of SLAVE STATES as "permitting *one* half of the *citizens* to trample upon the rights of the *other*"—thus explicitly recognizing the slaves as *citizens*. And the government thus described, deserves, he says, to be "*loaded with execration*," instead of being cherished as a true republican government. So says likewise the Constitution of the United States, and "guaranties to every State in this Union" an exemption from the curse of such an execrable government. "The United States" have therefore "guarantied to every State in this Union" a government FOUNDED —BASED upon "the equal rights of EVERY CITIZEN, in his *person*, and *property*, and in their *management*." Can human language express a more full and unequivocal guaranty than this, of the abolition, by "the United States," of all the slavery in "every State in this Union?"

But let us examine the connected propositions of Mr. Jefferson, that his full definition of a "republican government"

may be distinctly before us. To the above statement he adds:

"2. The rightful *power* of all legislation is to declare and enforce only our *natural rights and duties*, and to *take none of them from us. No man has a natural right to commit aggression on the equal rights of another;* and this is ALL from which the law ought to restrain him. Every man is under a natural duty of contributing to the necessities of society, and this is all the law should enforce on him. When the laws have declared and enforced all this, they have fulfilled their functions."

"3. The idea is quite unfounded that on entering into society, we *give up any natural right.*"

The full bearing of all this upon the legality and validity of slave laws, any where and every where, we do not discuss now. In another connection we may, if we have room, advert to it. What we have to do here is to find out, in the light of our current literature and lexicography, the meaning of the phrase, "a republican form of government." And the reader will see that *Mr. Jefferson's* definition does not cover the government of a *slave* State.

We will next introduce MR. MADISON to the stand, and ask *him* to define for us the phrase, "*republican form of government.*" Very fortunately for us, Mr. Madison has left us his definition in "black and white," published under his own eye—a definition framed *for the very purpose* of telling the People of the United States what is a republican government, while the question of adopting the Constitution was pending their decision. At that precise period it was that Mr. Madison, Mr. Jay, and Mr. Hamilton undertook, jointly, the task of defending and *explaining* the Federal Constitution, in a series of essays, which were afterwards collected together, and published in a volume entitled, "*The Federalist,*" &c.* From an article of Mr. Madison in this book, we will now present an extract. And Mr. Madison was a prominent member of the Convention by whom the Constitution had been framed and submitted to the States.

"Number XXXIX," of the Federalist, "by James Madison," contains the following:

"*The first question* that offers itself is, whether the general *form* and *aspect* of the government be strictly *republican?* It is evident that no other form would be reconcilable with the genius of the people of America; with *the fundamental principles of the Revolution;* or with that honorable determination which animates every votary of FREEDOM, to *rest* all our political experiments on the capacity of MANKIND for SELF-GOVERNMENT. If the plan of the Convention therefore, be found to depart from the republican character, its advocates must abandon it, as no longer defensible."

* "The Federalist, on the New Constitution, written in the year 1788, by Mr. Hamilton, Mr. Madison, and Mr. Jay," &c. &c.

The reader will please notice, in this paragraph, (1) that it is a "republican *form* of government" that Mr. Madison is intent on describing: (2) that he *identifies* such a form of government with "*the fundamental principles of the revolution*"—its self-evident truths, and inalienable human rights, (3) with "*freedom*;" and (4) with a recognition of "the capacity of *mankind* for self-government." But Mr. Madison proceeds:

"What then, are the distinctive characters of the *republican form*? Were an answer to this question to be sought, not by recurring to *principles*, but in the application of the term by political writers, to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in almost an absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy, in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions."

The *American* and *modern* meaning of the word "*republican*," according to Mr. Madison, is widely different from the meaning which some *European* writers of *former times* had put upon it—a consideration which is of importance to be kept in mind. Mr. Madison proceeds still further:

"If we resort for a criterion, to the different *principles* on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly, or indirectly from *the great body of the people*, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government, that it be derived from *the great body of the society*, NOT *from an inconsiderable proportion*, OR, a *favored class of it*; otherwise a handful of tyrannical nobles, *exercising their oppressions by a delegation of their powers*, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, BY THE PEOPLE, and that they hold their appointments by either of the tenures just specified; *otherwise*, every government in the United States, as well as every other popular government that has been or can be well organized or well executed, *would be degraded from the republican character*."

Very evidently a *slave* State can not be a *republic*, according to the definition of Mr. Madison. It is *essential* to a republican form of government, says Mr. Madison, that its power "be derived from the great body of the society; NOT from an inconsiderable proportion; OR" from "A FAVORED CLASS of it." The disjunctive "*or*" expresses

distinctly, Mr. Madison's denial that a State can have "a republican form of government" whose power is derived from "*a favored class*," although that favored class may be even a majority of the inhabitants. The holding of the power by "A FAVORED CLASS" is inconsistent with the "republican character" of the government. In every slave State, the slaveholders, or, if you please, the whites, are "*a favored class*" who hold all the political power; "exercising their oppressions by a delegation of their powers." In *some* of the States the whites are a minority, in *all* of them the slaveholders, who substantially wield the State governments, are. And in the aggregate of all the slave States, these "tyrannical nobles" are comparatively, a "handful," being less, by estimation, than two hundred and fifty thousand, in the thirteen slave States, among the seven millions of inhabitants of those States, and in the presence of nearly three millions of slaves. So that the actual *slaveholders*, the only really "*favored class*" in the slave States, and on whose behalf this "oligarchy" is maintained, are less than one tenth as numerous as the slaves to whom they deny all the essential rights of humanity, as well as political power! If neither Holland, nor England, nor Poland, nor Venice, may be called republics—because of their aristocracies and their monarchies, what shall be said of our slave States?

Will it be said that Mr. Madison was treating of *Federal* and not of the *State* governments? That he had no reference to the *slave* States? or to *slavery?* That he did not *mean* to deny the republican character of the slave States? That he would have resisted any such application of his doctrine?

Some of these statements would first need to be proved. But granting, for the argument's sake, that they were all true—what then? It would only make the testimony of Mr. Madison the more available for our purpose. For it would be giving us the testimony of an *opponent*, to the verity of our *premises!* We were not citing Mr. Madison's *opinions* about our *conclusions!* No. Nor about the *intentions* of the framers of the Constitution. We only sought from him a *definition of the phrase "republican form of government."* That definition he has furnished. And all impartial men will see that, whatever he *intended*, or whether he intended any thing at all, in relation to this subject, his definition *does as a matter of fact*, exclude slave States from the list of republics. Incidental testimony, or testimony against the interests or the opinions of the witness, is the

most unimpeachable testimony that can be produced. If Mr. Madison's opinions of the subject of slavery and its remedy *were* altogether co-incident with our own, or if Mr. Jefferson's were, we should be charged with citing the testimony of "fanatics," the testimony of our own partisans and leaders!

Mr. Madison *was* indeed treating of the Federal and not of the State governments. He gave a definition of a "republican form of government" nevertheless. It was the *meaning of the words* we were seeking after. That meaning is ascertained. And until it can be made to appear that the phrase "a republican form of government," means a government in *favor of liberty* when applied to the *Federal* Government, but means a government *in favor of slavery*, and AGAINST liberty, when applied to the government of "*every State* in this Union," it will remain demonstrably certain that, by the provisions of the Constitution of 1787–9, "the United States shall guaranty to every State in this Union" *the abolition and the absence of slavery*. There can be no protest filed against this decision, that shall not amount to an appeal from the Court of "strict construction" to that of some other tribunal.

And yet we have other witnesses to produce. Two separate CONGRESSES, the one immediately *before*, and the other immediately *after* the Federal Constitution was adopted, deliberately and almost unanimously abolished and forever prohibited slavery, in the *only territory*, (as distinguished from States) then belonging to the national domain. And they saw fit, in this solemn act, to state with precision the *ground* on which this National Legislation was based. And what was it? They affirmed that they did so, for the purpose of "*extending* the fundamental principles of *civil and religious liberty which* FORM THE BASIS wherever these REPUBLICS, their laws, and their CONSTITUTIONS are erected."

That is, they abolished and forever prohibited *slavery* in the North West Territory, soon to be formed into new "*States of this Union*" because they wished to "extend" prospectively, to those States, "*a republican form of government*" which they could not possess, *if slavery* remained. We stop not to insist now, on the very explicit declaration here embodied, that SLAVERY is repugnant to the CONSTITUTIONS of the American republics, the *States*. *That* item may fill a niche in another part of our argument, if we should not, in the plenitude of our resources, lose sight of it. All

we urge here, is simply the *definition* furnished by these two Congresses, just before and after the adoption of the Federal Constitution, of the meaning of the *terms* it employs, when it speaks of a *republican government.* We claim that this, along with other items of our then current political literature, decides the *ordinary import* of the phrase, and decides it *against* the "republican character" of a slave State.

In attestation of the justness of this claim, we cite another witness; General HEATH, of Massachusetts. In the Debates in the Massachusetts Convention of 1798, on the question of adopting the Constitution of the United States, Gen. Heath, having adverted to the subject of slavery, and to the then recent act of Congress prohibiting it forever in the North West Territory, said, "By their ordinance, Congress has declared that the new States shall be REPUBLICAN STATES, and have NO SLAVERY!"—*Deb. Mass. Conv. p.* 147.

Thus evident and certain is it the American political literature, along with the American Dictionary, so defines "a republican form of government" as to exclude slave States from coming within the definition.

And American writers, or those of the more modern date, are not alone in these views of a republic. The celebrated Montesquieu, one of the most distinguished of French authors, and who died more than twenty years before the Declaration of American Independence, in his "*Esprit des Loix,*" (Spirit of Laws) first published in 1748, translated and republished in England and America, and now for eighty years a standard work in both hemispheres, is scarcely less explicit on this subject.

"In *democracies,* where they are all upon an equality, and in *aristocracies,* where the laws ought to use their utmost endeavors to procure as great an equality as the nature of the government will permit, SLAVERY IS CONTRARY TO THE SPIRIT OF THE CONSTITUTION," &c.—*Spirit of Laws, Vol. I., Book XV., Chap. I.*

Not only in *democracies,* then, but even in aristocracies, (which we, in America do not deign to reckon among republics,) this profound writer on the Spirit of the Laws regards SLAVERY to be UNCONSTITUTIONAL, from the *very nature of the government!* Yet Montesquieu was educated, and wrote, under the old French Monarchy! Do our American definitions of "a republican form of government" fall *below* those of a Montesquieu? Does the definition, in America, now, include *less* of the ideas of liberty, equality, and inalienable human rights, than it did in Europe a century ago? We

are only inquiring after *the meaning of words.* But important *changes* in the meaning of words, may sometimes reveal to us important changes in something else. The meaning of "a republican form of government" in this country, in 1789, is sufficiently ascertained. On the present and rising generation it may depend, whether it shall long retain *any meaning at all!*

We have some further definitions to adduce.

Can that be a *republican* government which is not even a *free* government? Some limited monarchies—that of England, for example—are sometimes claimed to be *free* governments, by those who would not venture to call them *republics.* This question settled, we have another. Can that be a *free* government that does not secure and maintain *freedom of speech* and of the *press?* This latter question, let the slave State of Virginia herself, answer.

"The *freedom of the press* is one of the great bulwarks of liberty, and *can never be restrained,* but by a DESPOTIC GOVERNMENT."

All State Governments, then, that *do* restrain the freedom of the press, are "despotic governments," and not republics. So says the State of Virginia. But what slave State does not restrain freedom of the press? If there are some of them in which such freedom is not formally prohibited, in which of them is it maintained and preserved?

The statutes of Louisiana, Tennessee, and other slaves States, *including Virginia herself,* as adverted to, in our first chapter, furnish sufficient answers to these questions. And yet the *Constitutions* of Delaware, Maryland, North Carolina, South Carolina, Georgia, Louisiana, Kentucky, Tennessee, Mississippi, Alabama, and Missouri, (all of them slave States,) to say nothing of the Constitutions of the non-slaveholding States, are full and explicit in affirming the inviolable rights of free speech and a free press. *By their own definition* of a republican government, *these* States therefore, or such of them as do not maintain this freedom, are not republican States, and the United States have guarantied, and warranted, on their behalf, that they shall become so.

We can afford but little room, here, for further quotations from the highly authoritative *political literature* of our country by which the *meaning* of the phrase "republican form of government" is fixed and *defined.* But there is one specimen now before us, so full and entire, that we must give it a place.

"We the People, hereby ordain and establish this Constitution of Government, for the State of *Delaware.* Through Divine goodness ALL MEN

have by nature the rights of worshipping and serving their Creator according to the dictates of their consciences, of *enjoying and defending life and* LIBERTY; of ACQUIRING and protecting reputation and PROPERTY, and, in general of obtaining objects suitable to their condition, without injury to one another, and as these rights are *essential* to their welfare, for the due exercise thereof, power is *inherent in* them:—and THEREFORE, ALL JUST AUTHORITY, *in the political institutions of society* is derived from the PEOPLE, and established with their CONSENT, to advance their happiness; and they may, to this end, as circumstances require, from time to time, alter their Constitution of Government."

The heaven derived right of ALL men to enjoy religious and civil LIBERTY, to acquire and hold PROPERTY, are here explicitly made the very FOUNDATION of those "political institutions" whose "authority" is "derived from the people"—that is to say—"republican forms of government." The connecting word "*therefore*" expresses this idea, and makes the paragraph, as a whole, equivalent to a declaration that WITHOUT the security of civil and religious *liberty*, to "*all men*" including their right to acquire and possess *property*, such "political institutions" as "republican forms of government" could not exist.

By a less rigid definition and "strict construction," of a "republican form of government," it might be found difficult to establish the claims of our American slave States, or many of them, to the character of republics. No one, certainly, can question the correctness of that part of Mr. Madison's definition, which says, "it is *essential** to such a government that it be derived from the *great body* of the society, NOT from an *inconsiderable proportion* of it." A State, then, governed by a *minority* can not be a *republic*. But some of the slave States, and it is believed, most of them, are governed by minorities. In South Carolina, Mississippi, and Louisiana, the slaves themselves, (exclusive of the free people of color,) outnumber the white population. When it is remembered that no colored person can have any share in the government, though that class are numerous in some of the States, and also that very few of the still more numerous class of non-slaveholding whites, (who, in those States, are, for the most part, very degraded,) can participate in the franchise, or hold office, it must be evident that, in most of the slave States, the government is in the hands of the minority, and that this minority are slaveholders.

The whole number of slaveholders in the United States, has been estimated at not more than two hundred and fifty

* This *italicizing* is Mr. Madison's in the paragraph before quoted from the Federalist.

thousand. Yet these are distributed in an aggregate population of above *seven millions*, in the thirteen slave States, the Territory of Florida, and Federal District, according to the census of 1840.* This exhibits a proportion of *one* to *twenty-eight*. Yet the slaveholders govern. Their proportion to the whole adult male population, we can only conjecture or estimate; but very evidently they must be a small minority. The Constitutions of many of these States, making a landed estate a qualification of voters, and especially of legislative and executive officers, have virtually secured the *supremacy of slaveholders*. "Fifty acres of land" is requisite, in several States, to make a voter. A Governor of South Carolina, must be worth £1,500 sterling, and a Senator £300 "of a settled freehold estate," and a representative "a settled freehold estate of five hundred acres of land and *ten negroes*, or a real estate of £150," &c., &c. In Tennessee, the Governor must own 500 acres of land, and a Senator 200.

Whether therefore, we define a republic by its principles, its usages, its protection of human rights, or its sovereignty of the People, or of a majority of them, the slave States can not be called *republics*.

We dismiss this topic with a single inquiry. If, by the words and the phraseology of this clause, the United States have *not* guarantied to every State in this Union an exemption from the extremest possible departure from a republican government; have not warranted and secured them from a *government that shall chattelize its citizens*, "transforming some into despots and others into enemies," permitting "one half its citizens to trample on the rights of the other"—then we demand *what it is* that these words and phrases *do* signify? And what "form of government" the *United* States may not permit to be established and maintained in the different *States*, without a breach of the guaranty?

Security of Liberty:—"due process of law."

The Constitution prepared by the Convention, in 1787, among its declared and leading objects, as set forth in its

*The census of 1840, exhibits the following. *South Carolina.* White persons, 259,084. Free colored persons, 8,276. Slaves, 327,038. *Mississippi.* Free white persons, 179,074. Free colored persons, 1,369, Slaves, 195 211. *Louisiana.* White persons, 158,457. Free colored persons, 25,502. Slaves, 168,452. Suppose now, in these States, the slaves and free colored persons, should form a constitution of a "republican form of government," elect officers, and demand the Federal guaranty. What must Congress do? "Strict construction" remembers that the Constitution says nothing about SLAVES, and nothing about COLOR.

first sentence, had distinctly enunciated its intent to "secure the blessings of liberty to ourselves, and our posterity." Yet the People, it seems, were desirous of some more specific declaration of the *manner* in which this security was to be *extended* to them. So says the record of those times.

"The Conventions of a number of the States, having, at the time of their adopting of the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added. Congress, at the session begun and held in the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several States, twelve amendments, ten of which only were adopted."—*Federalist, page* 530.

Among these AMENDMENTS was the one from which we extract the following. We copy so much as relates to our subject.

"*No person* shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury," &c., &c., &c. * * * * "NOR be *deprived of life*, LIBERTY, *or property, without* DUE PROCESS OF LAW," &c., &c., &c.—*Amendments, Article V.*

It is to be observed and kept in mind that these "AMENDMENTS" *to the Constitution*, added as they were, *after* the adoption of the original instrument itself, possess of necessity, and in their own nature, a *corrective, a revisory character.* They are not simply *additions* to the instrument; they are, what they are denominated, "AMENDMENTS," alterations perhaps,—*changes.* If one clause or article of the original document had appeared to conflict, or had been found to conflict with another, it might have seemed difficult to decide upon their conflicting claims. For one clause, (it might be thought,) should be to be regarded as of equal authority with another. *Not so*, when one of the conflicting clauses should be found in the original instrument, and the other in an "*amendment.*" The "amendment," very manifestly, takes precedence, and displaces, annuls, repeals, abrogates, erases, *whatever in the original instrument is found to conflict with it.*

Suppose it should have been found, then, or suppose we should now grant, for the arguments' sake, that all the parts of the original Constitution, already examined, are in favor of slavery, and none of them in favor of its abolition:—suppose it were an admitted fact, that the clauses concerning "persons held to service and labor"—concerning "apportionment of reprentatives and direct taxes"—concerning "migration or importation"—concerning the "suppression of insurrection"—"protection against domestic violence"—and concerning "the reserved rights of the States"—sup-

pose, we say, it were certain that each and every one of these clauses *did* "guaranty" or *did* tolerate by "compromise" the existence of Southern slavery:—suppose further, that the original Constitution had contained *no* declaration of the purpose and intent to "secure the blessings of liberty" union, justice, tranquility, common defense and general welfare—had contained *no* grant to Congress of *powers* for the accomplishment of these ends, *no* declaration that the "Constitution of the United States and laws of Congress, made in pursuance thereof," should be held to be the "supreme law of the land"—suppose Congress had been clothed with *no* powers over "commerce with foreign nations, and among the several States"—suppose the United States had *not* guarantied "to every State in this Union a republican form of government" or that such a guaranty did not amount to a guaranty against *slavery*—WHAT THEN? If, among the subsequent "AMENDMENTS" to the Constitution, there can be found a *single clause*, or *fraction* of a clause, that either restricts or abolishes slavery by its own inherent efficacy and operation, or authorizes Congress, or enables the National Judiciary to restrict or abolish slavery, then that clause or fraction of a clause, being an "*amendment*," an *alteration*, a *repeal* of all that shall be found to *conflict* with it in the original instrument, and supplying the omissions and defects of the same, provides for the abolition or restriction of slavery *as effectually* as if, in all the preceding particulars, the Constitution, as first adopted, had been the *reverse* of what our supposition has described.

This being premised, we proceed to consider this fifth Article of Amendments. The supposition just now made, that the original Constitution had "guarantied slavery," (if our opponents choose to retain it,) will do us no manner of harm, *here*. We are now to inquire after the meaning of an *amendment*. And if it were true that the People of the United States had pledged themselves to suppress insurrections of slaves, to return fugitives from slavery, and in other ways to become the drudges and tools of the "peculiar institution," thus involving themselves in its guilt, its disgrace, and its dangers; *such* a circumstance, one would think, might well *entitle* them to have some share in *defining* the slavery they had "guarantied"—to assist in prescribing its *tenure and its conditions*—to declare *who* shall "be deprived of their liberty," and by what "*process*" they should be thus deprived of it. Otherwise they could not know *what* they had "guarantied" nor whether they themselves and their posterity might not become the *victims* of the guaranty!

But whether the original Constitution contained a guaranty of slavery or not, it was confessedly thought important to define the conditions of liberty, and to say in what manner a "person" living under our government, could be "deprived" of so inestimable a blessing. The clause before us *contains* that definition. What is its *meaning?* What do the *words say*, in their *ordinary import and acceptation?* A "strict construction" is all we ask for, now, and *that* we shall insist upon.

"*No person* shall be deprived," &c. That is, no "individual *human being*, consisting of body and soul"—(as Noah Webster hath it)—no "*man, woman or child*" "shall be deprived of liberty, &c., without due process of law."

Shall be deprived of *liberty*—i. e. "the power of acting as one thinks fit, without restraint or control, except from the laws of nature."—*Noah Webster.*

"Without *due process of law.*"—"*Process.—In Law:*—the whole course of proceeding, in a cause, real or personal, civil or criminal, *from the original writ*, to the end of the *suit.*"—*Noah Webster.*

In order to understand the full power and significancy of this phrase, "*due process of law*" which the writer of this Amendment took of course, from the vocabulary of our Courts of Justice, and from the accredited law literature of our language, we must trace it back to its early use, and follow it down to the present time.

"These words," says Alvan Stewart, "from the days of King John, in the Vale of Runney Meade, to the day of the final adoption of the Federal Constitution, have been employed and understood, as having certain and fixed ideas." "The sturdy barons and wise men of England, compelled a volatile King to subscribe Magna Charta 500 years ago, containing the words of our 'Article,' and from that day to this, every Englishman and American has claimed, as a part of his inheritance and birthright, the invaluable principle that '*no person shall be deprived of his life*, LIBERTY, *or property, without due process of law.*' In fact this constitutional provision is nothing but one of those invaluable principles, priceless in character, drawn from the vast quarry of the common law." "It is believed that no lawyer in this country or England, who is worthy the appellation, will deny that the true and only meaning of the phrase '*due process of law*' is an indictment or presentment of a Grand Jury, of not less than twelve nor more that twenty-three men, a trial by a petit jury of twelve men, and a judgment pronounced, on the finding of that jury, by a Court."*

Judge Story, in his Commentaries upon the Constitution of the United States, (as cited by Alvan Stewart, Esq.,) speaking of this sentence of this Article of the Constitution, says :—

* See Constitutional Argument, on this Clause, by ALVAN STEWART, Esq., in the "Friend of Man," October 18, 1837, from which our argument, on this topic, is chiefly taken, in a condensed and modified form.

"The other part of the Clause is but an enlargement of the language of Magna Charta '*nec super cum ibimus, nec super cum mittimus, nisi per legale judicum parium suorium vel per legem terra*'—*neither will we pass upon him, or condemn him, but by the lawful judgment of his peers, or by the law of the land.*—Lord Coke says that these latter words, '*per legem terra*,' (by the law of the land,) mean '*by due process of law*,' that is, without due presentment, or indictment, and being brought in to answer thereto, 'by due process of law.' So that this Clause, in effect, affirms the right of trial, according to process and proceedings of common law."

The terms employed in this Amendment are thus defined, and its meaning ascertained, It says that "no individual *human being*, consisting of body and soul; no man, woman, or child," in these United States, or under the sheltering wing of its Constitution, shall be deprived of liberty, (of the power of acting as one thinks fit, without restraint or control except from the laws of nature,) without due process of law, without indictment by a grand jury, trial and conviction by a petit jury, and corresponding judgment of a Court.

Every "individual human being, with a body and a soul; man, woman, or child," within the United States, deprived of liberty *without* indictment, jury trial, and judgment of Court, is therefore UNCONSTITUTIONALLY deprived of liberty. A "*strict construction*" of the Constitution can result in no other decision than this. For this is taking the Amendment according to the literal meaning of the words.

"If this be true," says Mr. Stewart, "any judge in the United States, who is clothed with sufficient authority to grant a writ of *Habeas Corpus*, and decide upon a return made to such a writ, on the master and slave being brought before said judge, to inquire by what authority he, the master, held the slave, if the master could not produce a record of conviction, by which *the particular slave* had been deprived of his liberty, by indictment, trial, and judgment of a Court, the judge would be obliged under the oath which he must have taken, to obey the Constitution of his country, to discharge the slave, and give him his full liberty."

Come forward, now, ye claimants of a slavery under "guaranty of the Constitution of the United States!" And come, ye claimants of "the compromises of the Constitution" in favor of slavery! What say you? Do ye still continue to urge the claim? *If so*, prepare to abide the *result* of your claims. *If there are* any such compromises or guaranties in the *original instrument*, (the Constitution of 1787–9,) then, *along* with those "compromises" or "guaranties" you must take the provisions of this *Amendment*, which (in case the Constitution has "recognized" any slavery at all) have specifically *defined* the slavery thus recognized, and fixed the bounds which it can not pass. Search now for your *constitutional* slaves, deprived of liberty, by "*due process of law?*" By personal indictment, trial, verdict, and judicial

sentence? Where are they? Or who is the claimant of *such* a slave? You claim as strict constructionists, your "pound of flesh, according to the bond!" Take it then, but take the precise, the specified pound, and take not a fraction more.

More than half a century has rolled by, since this *Amendment* became the "*supreme law of the land.*" But no "individual human being" now held as a slave has ever been "deprived of liberty by due process of law." No one will pretend this. On the principle of "*strict construction*" then, the principle of abiding by the *literal meaning of the words* of the Constitution, the Congress of the United States are authorized and called upon, by the facts of the case, to pass a declaratory act, recapitulating the facts, and declaring each and every "individual human being, with a body and a soul, man, woman, or child," now held in bondage, in the United States, yet *not* "deprived of liberty, by due process of law" *to be free.* "All presumptions are to be made in favor of liberty," and therefore all who can not be proved to have been "deprived of liberty by due process of law" must be adjudged free.

If the "*peculiar*" claim shrinks from this judgment, it must abandon "*strict construction*" altogether—must take its cause out *of that Court*, or wait the proper time for filing an appeal to *another tribunal.*

More than this it must do. It must take especial care not to urge either its pretended "compromises" or its "guaranties" of the "peculiar" interest, either before the Court of "strict construction" *or any where else!* For the moment it does this, it *endorses a principle* that arms this same notable *fifth article of Amendments*, with all the formidable powers we have claimed for it, and there is no escape from its grip. Establish, by *any* principle of construction, the constitutional guaranties and compromises of slavery in the *original Constitution*, and you establish both the principle and the fact that the United States and the Federal Government, *are responsible*, politically and morally, responsible to the People, to posterity, and to high heaven, for the continued existence of that gigantic crime and curse. And how shall the United States, and the Federal Government escape from those responsibilities or honor them? In no way that we can think of, (in such a case,) more conveniently or legally, more effectually or more speedily, than by *taking the claimants at their word:* conceding to them, *(if they will have it so,)* that the *original* Constitution contained the "compromises" and

the "guaranties" claimed—but insisting withal, that the *fifth article of* AMENDMENTS, with its paramount authority over the compromises and guaranties of the *original* instrument which it now *modifies and changes*, in virtue of its *emendatory powers*, has *defined, restricted* and *circumscribed* the slavery *thenceforth* to be compromised or guarantied, confining it within the constitutional limits therein specified, viz :—the enslavement of those deprived of their liberty, "by due process of law."

Another dilemma is thus presented, on either horn of which, at its pleasure, the "peculiar" claim is at liberty to swing. IF THE CONSTITUTION HAS "GUARANTIED OR HAS COMPROMISED" WITH SLAVERY, *then it has* DEFINED *it:* AND THE DEFINITION IS RECORDED IN THIS FIFTH ARTICLE OF AMENDMENTS.

It will be of no use to plead in the Court of "strict construction" that such could not have been the *intentions* of those who drafted this clause. The question here is *not* what *they intended*, but what they the *People have done*, by adopting that clause. It tells its own story and there is no escape from its meaning.

Many a litigant has found, to his cost, when in Court, that the instrument to which he had subscribed his name, a long time before, *expresses* something that he did not *intend*, when he signed it. But the Court decides according to the ideas *expressed in the document*, and not according to his own statement of his *intentions*. We are in Court, now, and a Court too, that always sticks close to the "*strict letter of the law.*"

SLAVERY IN THE TERRITORIES AND FEDERAL DISTRICT.

"The Congress shall have power to dispose of, and *make all needful rules and regulations* respecting the *territory* or other property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."—*Constitution U. S., Art. IV., Sect. 3, Clause 2.*

The next previous clause had provided for the admission of new States into the Union. One of the earliest acts of Congress, after the organization of the Government, under the Federal Constitution, was the act forever prohibiting slavery in the North West Territory, the *only* Territory then belonging to the United States. And no demur has ever been made on the ground that Congress did not possess the constitutional power. This would seem to settle the question, if any question of the kind could be raised, whether Congress possesses power to abolish slavery, in any *other*

Territory or District belonging to the United States. But in respect to our present Territory of Florida, including the States formed out of the Territory of Louisiana, and the District of Columbia, we are authorized to occupy even higher ground. We present a view of this ground in the words of some Resolutions adopted by a Liberty Convention in Ohio, and afterwards at similar conventions, at Buffalo, and elsewhere.

That the laws of France in virtue of which slavery existed in the Territory of Louisiana; the laws of Spain in virtue of which slavery existed in the Territory of Florida; and the laws of Virginia and Maryland in virtue of which slavery existed in the District of Columbia, ceased to be in force at the moment when said Territories and District were ceded to the United States, and consequently every slave therein, became, at that moment, free.

That all acts of Congress, for the continuance of slavery in the Territories of Louisiana and Florida, and in the District of Columbia, after the the cessions, became null and void, not only by reason of the want of power in Congress to pass such acts, but because they are in direct conflict with the fifth article of the Amendments of the Constitution, which declares that "NO PERSON SHALL BE DEPRIVED of life, LIBERTY or property, without due process of LAW," and also in conflict with the Preamble of the Constitution, which declares the establishment of Justice to be one of the chief objects of its formation.

That all constitutional provisions and laws of the States created within the limits of the Territory of Louisiana, and all acts of Congress admitting such States into the Union, so far as such provisions, laws, or acts, authorize or sanction slaveholding, are also null and void, because in conflict with the same article of the Amendments.

The argus eyes of the slave power and its sycophants, northern and southern, have never pretended to discover any provision, in any article, section, or clause in the Constitution of the United States, by virtue of which Congress or the United States are vested with *the power of establishing slavery any where.* "Strict construction" or any other sort of "construction" may search the instrument, in vain, for any thing of that description, or looking, even remotely, in that direction—*to be construed!* And the tenth article of Amendments may remind us that the Federal Government holds no powers not conferred in the Constitution. We are a little curious to know by what arguments those who deny the

power of Congress to *abolish* slavery, will undertake to prove the power of Congress to *create* slavery. But if it has no power to create slavery, then slavery in the Federal District and Territories is unconstitutional, and the Federal Courts are bound, whenever a case comes before them, thus to decide.

If slavery, in Florida and the District of Columbia, is constitutional, then slavery might be established by Congress at West Point, or any other spot, at which "forts, magazines, arsenals, dock-yards, and other needful buildings" of the United States, may be constitutionally "erected," and slavery would then be constitutional at all those places—a result too absurd for belief. Examine the Constitution and see if it be not so.

The Constitution and the District of Columbia.

"The Congress shall have power"—"to exercise *exclusive legislation in all cases whatsoever*, over such District (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise *like authority* over all places purchased, by consent of the legislature of the State in which the same shall be, *for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.*"

"*Like authority.*" These words are too plain to admit or require any explanation. Can Congress, under this clause, or by any other warrant, establish slavery at the navy-yard in Brooklyn, or at the arsenal in Springfield? If not, then it can not in the District of Columbia, and slavery is illegal there.*

Maintaining, as we do, the power of Congress to abolish slavery even in the *States*, and denying, as we do, the *present legality* of slavery in the Federal District and Territory of Florida, &c. &c., we are scarcely able to enter, with much interest, into the question that has been so strangely mooted *of late years*, whether Congress has power to abolish slavery in the District of Columbia! But if any one wishes to examine that question, on the old grounds, it is pertinent to notice the "*exclusive legislation in all cases whatsoever,*" which Congress, under the Constitution, exercises over the District.

"*Exclusive.*" No *other* legislative power on earth pretends to *any* legislative power over the District. Those who

* The reader is doubtless apprised of the fact that after the cession of the District of Columbia by Virginia and Maryland, and just before the appointed time for its coming into possession of the United States, the Congress of the United States *enacted a law* re-enacting, in the lump, the laws of Maryland, for that part of the District east of the Potomac, and the laws of Virginia for that part of the District west of the Potomac. This act was an unconstitutional establishment of slavery in the District, without which act the slaves would have been freed.

deny the power of *Congress* to abolish slavery in the District never undertake to tell us what legislature *does* possess that power.

"*Exclusive legislation*," we are sometimes reminded, in this connection, does not mean *unlimited* legislation. Certainly it *does not:* and this is the very reason why Congress does not possess power to *create* slavery in the District. But "exclusive legislation, in all cases whatsoever," *does* mean all such just and righteous legislation as is *appropriate and proper for all other civil governments to exercise.* So that there is no escape from the conclusion that Congress can constitutionally abolish slavery in the District of Columbia, but by affirming (as some have done) that *no government on earth has a right to abolish slavery!* And, with characteristic consistency, this ground is assumed by those who deny the inalienable rights of man by affirming that "*what the law makes property* IS *property:*" so that, though legislation can *create* slavery, yet legislation can not *abolish* it; in other words, that man possesses but *one* inalienable right, and that this is the right of slaveholding—the right of invading with impunity all the equal rights of his brother! It can not be expected by any reasonable person that we should waste time in the useless attempt to reason with such, or to make their absurdities more manifest than they already are.

We say nothing *here*, to the plea of "implied understandings"—"consent of citizens of the District," the "wishes of Virginia and Maryland," &c. &c., because "STRICT CONSTRUCTION" rules all such considerations out of the Court. It will not permit the jury to hear them. In another place we may look at them, and a glance should suffice. If any one, however, would be conducted over the whole ground, and feel his way, step by step, let him peruse Theodore D. Weld's "Power of Congress over the District of Columbia, originally published in the New York Evening Post, under the signature of Wythe"—a work hitherto unanswered, and containing a mass of important information, along with a force and demonstration of argument that will sufficiently account for the absence of a reply.

One or two things require to be noted, before dismissing this topic. There are no "reserved rights of the *States*" to be pleaded, on behalf of the slaveholders of the *District.*—Nor, (whatever may be said of the grounds we have taken on the clause concerning "persons held to service and labor in *one* STATE, under the laws thereof, and escaping to *another*") can any persons, *under that clause,* be "delivered up,

on the claim of the party to whom such service or labar may be due," in the case of such as, instead of escaping to another *State*, shall escape to the *Federal* DISTRICT. THAT soil, at least, is as sacred from the pollution of legalized, constitutional slavery, as is the soil of England itself. Slaves can not breathe there. There is no earthly power that can, *there*, legally enslave them. The moment they touch that ten mile square, they are, *legally*, as free as the President of the United States himself, and can no more be lawfully enslaved *there*, or *carried away* into slavery, or made slaves on leaving the Federal District, than the President can. Whenever *law* is properly administered, by a competent and faithful Judiciary, *this* decision will stand by the side of that of Lord Chief Justice Mansfield, in the case of John Somerset.

This is manifestly true, if Congress had no constitutional authority to *create* slavery in that District, there being no slavery there, except by authority of Congress. But if Congress *has* power to *create* slavery there, it has power to *abolish* it—power to *repeal* the law that created it. Another dilemma, for the benefit of whom it may concern.

RESTRICTIONS ON STATE POWER.

Hitherto we have considered the duties and powers of the *Federal Government*, under the Constitution of 1787–9, in relation to the existence of slavery, whether for its guaranty or its abolition. We are now to inquire whether the same Constitution has inhibited or restricted the *power of the States* to establish or maintain slavery, by any of the *specific provisions* of that document.

The explicit guaranty, by the United States, of a "republican form of government" to "every State in this Union," has already been noticed, along with the other responsibilities of the *National Legislature*. And it has been shown that such a guaranty is equivalent to a guaranty against slavery. A "guaranty—an undertaking, or engagement, by a third person or party, that the stipulations of a treaty shall be observed by the contracting parties, or one of them."—*Webster's Dictionary*.

This language implies that in coming into the Union, under the Federal Constitution, the several States entered into certain stipulations with each other, that one of those stipulations was the maintenance of a "republican form of government" and that the United States guarantied the due observance of this stipulation, and engaged to see to it, that the government of each State should be republican. In the very act of ratifying the Constitution of the United

States which contained this clause, "every State in this Union" *did* stipulate and agree to maintain "a republican form of government," and *did* agree that "the United States" shall see the stipulation, on the part of each State, observed.

But this mention of a republican government was in general terms. We shall see now whether the same Constitution imposes any particular prohibitions or restrictions upon the States, by provisions that go into details, and vitally affect the *republican character* of a State.

Article I., section 10, imposes a variety of restrictions upon the States—some of them incidental to their new position as members of a more extensive government, entrusted with the foreign relations of the country, its currency, its army, its navy, its commercial polity, &c. With these prerogatives of the General Government, the States were not to interfere. But along with these inhibitions were others, of a different character, and looking directly to the *security of individual rights*, the preservation of *republican equality* among the People.

"No State shall * * * pass any bill of *attainder*, expose facto law, or law *impairing the obligation of contracts*, or grant any title of *nobility*.—*Art. I., Sect.* 10, *Clause* 1.

The next clause of the same section provides that "No State shall * * * keep troops * * * in time of peace, or engage in *war*, unless actually invaded, or in such imminent danger as will not admit of delay."

"ATTAINDER.—1. *Literally*, a staining, corrupting, or rendering impure; *a corruption of blood.* 2. The judgment of death, or sentence of a competent tribunal upon a person convicted of treason or felony, which judgment *attaints*, taints or *corrupts his blood*, so that he can *no longer inherit lands.* 3. The ACT of attaining."—*Webster's Dictionary.*

That which the dictionary describes as the judgment or sentence of a tribunal, is what the Constitution says the State Constitutions and State Legislatures shall not enact. Particularly, they shall "pass no bill"—*enact no statute*, that does this thing. It may not do it, even in the case of a person "convicted of treason or felony." Even for those crimes, it may not "taint or *corrupt his blood*, so that he can no longer *inherit lands*." Of course it may not do this, in the case of a person convicted of the crime of having been born of a slave mother, or in the case of innocent persons, charged with *no* crime!

But every slave State has its *bill of attainder*, without which not a single slave could be held, in the State; and the *repeal* of which would be the abolition of slavery.

Every slave in America is a human being thus attainted. The slave code thus attaints him. It says expressly, "*Slaves*

can not take by descent." They can not be heirs. They can not inherit, or hold lands. They can receive and hold nothing by will or bequest. "The slave can hold no property."

Every slave in America, not imported from abroad, (and such importations have been prohibited since 1808,) is a slave *because attainted, corrupted in blood*, by the slave law. It is a *bill of attainder* running from generation to generation without limitation or end! The slave child follows the condition of the mother. "The noblest blood of Virginia runs in the veins of slaves," and is attainted, by this *bill of attainder*. The sons and daughters of Presidents, and Governors and members of Congress—the "posterity" of those who framed and adopted the Federal Constitution "to secure the blessings of *liberty* to themselves and (their) posterity" are corrupted by these bills of attainder in the slave States, "so that they can no longer inherit lands," or hold in legal possession a dung-hill fowl or a pig! The wide world knows all this, and no one is so stupid or so emulous of being accounted an ignoramus as to call it in question. Where then is the clause of the Constitution of the United States that prohibits the States from passing bills of attainder? Has it any efficacy, or power? *Has it any meaning?*

"CONTRACTS."—"No State shall pass any law * * * impairing the *obligation of contracts.*"—*Constitution.*

"The slave can make *no contract.*" "No contract made with a slave shall be binding." "The slave can not even contract marriage." "A slave can make no bargain, barter, or sale."—*Laws of Slave States.*

To buy any thing of a slave is a grave offense, in some of the slave States.

The *very words* of the Federal Constitution, and of the laws of the slave States are here brought into direct and harsh collision. What the former forbids to be done by the States, the latter emphatically does.

A merchant or a ship-master visits Wilmington, North Carolina. He enters into the shop of a cooper. He finds the boss cooper apparently as white a man as himself. He contracts with him to put in order for shipping, a cargo of staves and heading he has just purchased. The job may amount to some two hundred dollars or more. The cooper, with his gang of hands, goes about the work. By contract he receives, fifty dollars in advance, to distribute among his hands, or for other uses. The next day the cooper is missing. It turns out that he was a slave. His master has other work for him. He *had* permitted him, for a monthly sti-

pend, to drive his trade, for himself; but he has altered his mind, or a creditor has seized upon the cooper, or he is sold, and is on the way to Louisiana. What shall the ship-master do, for the fifty dollars? Can he claim it of the cooper's slave-master? No! Can he claim it of the cooper, if he can find him? No! *But why not?* Because the State of North Carolina has "*passed a bill impairing the obligation of contracts*"—has enacted that no contract formed by the child or grand child of a slave mother, to the thousandth generation, can be binding!

A slave contracts matrimony. Is the contract honored as binding? No! Because the law of slavery has *impaired the obligation of contracts.*

A slave owner is in the habit of sending an active slave to market, with his produce. He is even permitted by the master to contract sales before-hand. You bargain with him for a wagon load of flour, or of bacon, to be delivered in three days. You bargain before competent witnesses, and deliver some goods or money in advance. The day comes, and brings the market man with his load of produce: but he unloads at your *neighbor's* door in instead of *yours.* You remonstrate, but in vain. The slave master has ordered the produce delivered to pay an old debt, or (more probably) to get a higher price, or to cheat you out of your advanced payment which he has appropriated to himself.—Have you any redress? No. And simply because the State has passed a law, "*impairing the obligation of contracts.*"*

A slave bargains with his master for the price of his freedom. He takes his master's written agreement signed with his own had. Once a year he pays him one hundred dollars, according to agreement, and takes his master's receipt. In ten years the whole payment is completed, and he asks for free papers. Can he demand them? No. Can he get his money back again? No. Do the written agreement and the receipts avail him any thing? No. But why not? Simply because the State has "passed *a law impairing the obligation of contracts!*" †

Are such laws *constitutional?* If they ARE, what does this clause of the Constitution *mean?* We do not stop to ask

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* The case described actually occurred at Wilmington, N. C., some year's ago, during the writer's residence there. The slaveholder was a citizen of high standing, in political life.

† Another case, of not unfrequent occurrence. More than one fugitive slave has come to the North, within a few years past, with all the documents in his possession—the written agreement, the several receipts covering the sum stipulated, and yet has been obliged to run from the chase of blood hounds, to get his freedom.

what it is *worth!* We are in the Court of "strict construction" now, searching after the *meaning of words!*

"NOBILITY."—"No State shall grant any title of nobility."—*Constitution.*

But what *is* a title of nobility?

"*Nobility.* * * * (Among other definitions,) * * * "*Distinction by blood*, usually joined with *riches.*" "The qualities which constitute *distinction in rank*, in civil society, according to the *customs or laws* of a country."—*Webster's Dictionary.*

"*Title.*—An appellation of dignity, distinction or pre-eminence, given to persons, as, *a duke. A name, an appellation.*"—*Ib.*

"The institution of *domestic slavery* supercedes the necessity of an *order of nobility*, and all the other appendages of a hereditary system of government."—*Message of Gov. McDuffie of South Carolina.*

That is to say, it answers, substantially, the same *ends*—is essentially, the *same thing* under another name.

The slave State grants the "name," the "appellation" of slave owner. It grants *unlimited powers* and high "*dignities*" along *with* the name or "*title.*" The "qualities which constitute" a slaveholder carry with them and "constitute distinction in rank, in civil society, according to the customs or laws of (this) country." In some of the States, a man must be a slaveholder, in order to be eligible to certain offices. It is so far a "*distinction by blood*" that "white" persons only can be slaveholders, and children of slave mothers must always be slaves, and *can not be* slave owners. The claim is founded much on the superiority of the "Anglo-Saxon *blood*" to the "African."

The "distinction in rank, in civil society," which the slave owner holds "according to the customs or laws of this country," corresponds very nearly to that of the higher castes of the Asiatic nations, the feudal lords or barons, in the middle ages in Europe, and still retained by the nobility in Russia. This parallel is frequently insisted on, by the advocates of slavery, in justification of the "*institution*," and in proof of its conservative character; and its patriarchal antiquity. The very phrase—"*political institution*," with which it is dignified by its friends, is proof that *they claim for it* the honors of "a system, a plan of society established by law," for the promotion of political ends.* As a political institution, a "system or plan of society" established by State legislation, it changes the whole frame-work of the government in those States, nay, in the United States, as a general government—the very thing that the clause before us was obviously framed to prevent. As a "*political* institution," it is cherished

* See Webster's definition of an "Institution."

and valued and defended by statesmen who perfectly understand and admit the unprofitableness of slave labor. Like other political institutions of a similar character, it is wielded for the exclusive benefit of the *privileged caste* at the expense of *all others*. It operates to withdraw political power from the mass of the people, the laboring population, and confer it upon a *select few*, which is the very description or definition of aristocracy, or government of *nobles*.

"*Aristocracy*.—A form of government, in which the whole supreme power is vested in the *principal persons of a State*."—*Webster's Dictionary*.

"The supreme power" of the slave States is vested almost exclusively in those "principal persons of (the) State," the slaveholders, as has been shown in another connection. This privileged class of 250,000—this "peculiar" "order of nobility" that governs the slave States, constitutes but about *one sixty-eighth part* of the aggregate *seventeen millions* of inhabitants of the United States. Yet this petty oligarchy holding its "title" to the political powers of an "order of nobility," by virtue of the legislation of the States wherein they reside, and which they control at their bidding, have succeeded likewise in controlling the National Government itself, monopolizing, almost in perpetuity, the highest offices in the nation, moulding the national policy and wielding the national resources (through the legislative, executive, and judicial departments) for the exclusive benefit and aggrandizement of the *caste*, regardless, utterly, of all *other* interests, either sectional or national, whenever they come in competition, as they can not fail to do, with the "peculiar institution"—its stability, and its claims. All this, we repeat it, is done by *one sixty-eighth* part of our whole population—by a body of men whose aggregate numbers amount to little more than *one half* the number of *legal voters* in the single State of New York! All this too, by virtue of *State legislation*, which if repealed or annulled, would *instantly annihilate the caste itself*, and revolutionize *all our political affairs!*

If this be not an "order of nobility," in what particulars does *the definition of the thing consist?* Comparing *the facts* of the case with the definitions of our *lexicographers*, what else can we make of those *facts* than the veritable original existences, of which the *words* of the Constitution are the *expression?* By all intelligible apprehension or *construction of language*, does it not appear that the provision of the Constitution which inhibits the States from granting any "titles of nobility," is identical in *meaning* with that *other* provision which enjoins on the States "a republican form of

government," and that both are equivalent to a prohibition of slavery?

It avails nothing to say that, in many particulars the "peculiar" institution differs from the aristocracies of the old world. The aristocracies of Europe differ as much from those of Asia, as those of the American States do from both. The aristocracy of France differs from that of Venice, and both of them from that of Russia. The present aristocracy of Great Britain differs from that of its own ancient feudalism. But all are, alike, aristocracies, nevertheless. An order of "nobility" *precisely* upon the model either of the ancient feudal or modern European States, *could not have been* established in the American States, and a constitutional prohibition to *that* specific point would have been *without meaning;* as much so as it would have been to have prohibited the establishment of the Hindoo castes, or the patriarchal arrangements of Melchizedek's time. Instead of this the Constitution selects a generic term, that includes all the different species. The comparison of our American "nobility" with those of other nations and ages, would be a curious and an intricate one. In some particulars, the one might have a fair claim for the preference, and in other respects, the other. As a whole, it would be difficult to select a more odious, a more mischievous, a more anti-republican one than the American—none, certainly, so wicked, so cruel, so inhuman, so degrading, so demoralizing. In the comparison with it, the system of feudalism, which in some respects, it strikingly resembles, and to which it is often compared by its friends, was magnanimous and manly. *That* was founded on the spirit of military adventure—*this*, upon cupidity and meanness. The "*chivalry*" to which our American nobility of woman-whippers lay *claim* (thereby *asserting* their prerogatives as feudal chieftains or *barons*) is a quality which the semi-barbarous "nobility" of ancient Europe really *possessed*. They did not drive a nefarious traffic in the sinews and souls of their own children. They did not sell infants at auction by the pound. The serf was attached to the soil, but he was not an article of commerce, a chattel personal. The peasantry were not degraded by the incapacity to contract marriage, to live in the family relation, to possess some articles of property, and even to hold lands under a certain tenure and for services rendered. And they freely uttered their thoughts. If degraded, the serf was a degraded *man*, and not a mere *thing*. He was not manacled and driven to his daily task by a driver. So far from

being prohibited to bear arms, one of his avocations was that of a soldier; he was relied upon for his country's defense instead of being guarded by a patrol—the main tie that bound him to his master, was his relation *as* a soldier, to his *chieftain*, (whose family name he sometimes bore,) and to his "*clan*," in whose fame and triumphs he had a share. The feudal system, therefore, as a political arrangement, did little to *degrade the masses* under the heel of a *caste*, in the comparison with the slave system. If it degraded industry, it was not so much because it made labor the badge of servility, as because it inspired those who should be laborers with the ambition of military renown. *Such* a system would less violently and rudely clash with the aims and arrangements of a *free republic* than the slave system. In other words, it would be less aristocratic, would establish an *order of "nobility"* of a mitigated character, less obnoxious to the charge of subverting the liberties of the people.

"*Serf.* A servant or *slave* employed in husbandry, in some countries attached to the soil and transferred with it."—*Webster's Dictionary.*

"*Villein, or villain.* In feudal law is one who holds lands by a base or servile tenure, or in *villenage*."—*Ib.*

"*Villanage or villenage.* 1. The state of a villain; base servitude. 2. A base tenure of lands; tenure on condition of doing the meanest services for the *lord*."—*Ib.*

"*Feudalism.* The feudal system; the principle and constitution of feuds, or lands held by military services."—*Ib.*

The feudal "chief" or "chieftain" was the commander or head of a troop of serfs—or over a "clan" composed of such. "Chieftainship, or chieftainry" was "*the government* over a clan."—*Vide Webster.* The feudal chiefs were sometimes called "*barons*," and the word *baron*, according to Webster, is "*a title of nobility.*" The States are inhibited, by the Constitution, from granting "*titles of nobility.*" A "serf" is a sort of "slave," and his master is a "*lord.*"

Can any one doubt that the adoption of the *feudal system*, by one of the States, would be a breach of this provision of the Constitution? And if so, by what *construction of the language* employed, can we make it appear that the *still more* despotic and aristocratic system of American servitude is not also a breach of that same provision? If the *lesser* would be, why not the *greater?*

A comparison of our American "nobility" with that of *civilized modern* Europe; and of American *slaves*, with European *peasantry*, would exhibit contrasts still more striking. The distinction now existing between nobles and common-

alty in England, in the comparison with the ancient distinction between barons and serfs, has almost melted away! How manifestly then do our American slaveholders constitute a more despotic specimen of "nobility" than the nobility of Europe!

The only remaining question is, whether this provision of our Constitution retains *any meaning*, and if so, *what* that meaning *can be?* If it can not protect us from the most unmitigated of all aristocracies, from the most absolute and irresponsible of all orders of "nobility," from *what* aristocracies, or from *what* order of nobility *can* it protect us? And *how* can it do this?

"*War.*" "No State," (says the Constitution,) shall "keep troops in time of peace, or engage in *war*, unless actually invaded," &c., &c.

"*Civil War.* A war between people of the same State or city."—*Webster.*

Have the States a right to make war upon "one half" of their own "citizens?" Are the slave States, as a matter of *fact*, in a state of *war?* If they *are*, what has become of the constitutional provision that forbids it? If they are *not*, by what authority, under the Federal Constitution, do they keep up their "armed troops," their military "patrols" "*in time of peace?*" What right have they to authorize the scouring of the country, by armed troops with rifles, pistols, and other military weapons, (to say nothing of bloodhounds,) to hunt down and shoot, without judge or jury, a portion of the people, for no fault, but a desire to "secure for themselves and their posterity, the blessings of liberty?" What right have they to pass "acts of outlawry" against the laboring people, for no crime but refusing to labor without wages, or for the misdemeanor of visiting their husbands and wives, their children or parents, or seeking a residence with them? Have the States a right, under the Federal Constitution, to wield *military force* for objects like *these?* If they have, what is *the meaning* of the constitutional inhibition just quoted? And by what rules of *interpretation* shall that provision be so construed as to prohibit any OTHER species of *war*, or any *other* State arrangements for maintaining armed forces in time of *peace?* In another connection we have shown that the "suppression of insurrection," and the "execution of the laws," do not call for any military demonstrations, nor authorize them, in such cases as those now under review.

Another constitutional provision requires a moment's attention in this place.

"The citizens of *each State* shall be entitled to all the privileges and immunities of CITIZENS, IN the several *States*."—*Article IV., Section* 2, *Clause* 1.

But many of the "citizens" in some of the States, are free people of color. They are recognized as citizens by the Constitutions and Laws of the States wherein they reside. Large numbers of them are legal voters and vote at Presidential as well as State elections. They are eligible, and are sometimes elected, to office. A colored man has been a member of the legislature of Massachusetts.

Now the laws of all, or nearly all the slave States, or the regulations and ordinances of cities within those States and under State authority, are in *direct violation* of the above provision of the Constitution, so far as free citizens of color are concerned. They can not visit the slave States without being subjected to violations of their rights as citizens, by the public authorities of those States. If they visit the Southern sea-ports in coasting vessels, as seamen, they are seized and put in prison, for safe keeping, till the vessel is ready to depart. This is a fact of common and general occurrence, and if the colored citizens were ship-masters, supercargoes, or ship-owners, the law would equally apply to them. Any such citizen of a free State, visiting a slave State, is liable to be seized on suspicion of being a fugitive from slavery, thrust into jail, and unless able, (under such disadvantages,) to make satisfactory proof of his freedom, sold into perpetual slavery, *attainting his posterity forever*, under the great Southern "BILL OF ATTAINDER" FOR THE PAYMENT OF HIS JAIL FEES! [Strange to tell, the laws and the usages of the Federal District itself, under "exclusive legislation of Congress," and under its eye, conforms to this general law of slavery in the States, on the plea that comity to the States requires it, and that in no other way can "the peculiar institution" be preserved!] Thus complete are the triumphs of the slave power over the plainest and most pointed prohibitions of the Federal Constitution.

The time would fail to point out all the ways in which the rights of *white* citizens of the free States secured under this clause, are violated by the action of the slave States. At this moment, there are thousands and tens of thousands of citizens of the free States, including many of their most estimable inhabitants, and not a few gentlemen of literary

distinction and high station, ministers of the gospel and statesmen, who can not, with safety to their persons, visit large portions of the slave States. In some of those States they would encounter enactments for the capital punishment of those who should have spoken or written against slavery. In none of them, perhaps, would they be secure of *protection* from the summary vengeance of "Lynch law"—and in some cases, they would be dependent for that protection, on the State authorities that had demanded of Northern Governors the delivery into their own power of white Northern citizens, to be tried under slave laws, for the crime of writing, *even in a free State*, against slavery—authorities too, that had demanded Northern legislation against freedom of speech and of the press—authorities that had offered large rewards for the felonious abduction, *in* the free States where they resided, of free white citizens, for the same crime of writing against slavery!

Is any more evidence needed, that *this* constitutional provision is, with impunity, violated, and made of none effect, by the action of the slave States?

And all this be it remembered, is in harmonious keeping with the common and prevailing *expositions of the Constitution* which make it a "guaranty" of slavery or a "compromise" with it, and *therefore* a crime or a misdemeanor for any subject of the Constitution to oppose SLAVERY, the sacred object of constitutional protection!

THE "SUMMING UP."

1. In this chapter we have examined, upon the principles of "strict construction," those provisions of the Constitution that have been held to involve a "guaranty" of slavery, or its tolerance by "compromise," and we claim that, on those principles, no such guaranty or compromise can be proved.

2. On the same principles, we have considered other portions of the Constitution, which we claim to have proved inconsistent with the existence of slavery in the States, and to require and authorize its abolition, by the Federal authorities, judicial and legislative.

Let the supposition now be made, for the argument's sake, that we have failed to prove what we claim to have proved, under this *second* head. It might still be true that no "guaranty" or "compromise" in favor of slavery, on the principles of strict construction, could be proved. This would leave the "peculiar" institution without the benefit

of a national *guaranty* or even a *compromise*, in its favor. And from that circumstance we could deduce an argument not very different in its *practical results* from the one now reached. Remove from slavery the *support* it derives from the Federal Government, and it speedily falls. And besides, in the absence of any guaranty or compromise *in its favor*, what consideration of justice or policy could forbid the Federal Government to *abolish* it?

We will now vary the supposition a little. Let it be assumed for a moment, that the Constitution, by the principle of "strict construction" has been found to conflict with itself —that while on the one hand, it contains some provisions in favor of slavery, on the other hand, it contains some provisions against it. Not a few *have believed* this to be *the fact*, and they have been puzzled and perplexed with the supposed phenomenon, and have solicitously asked how such a Constitution could be administered. Others have supposed that each feature and provision of it, whether *for*, or *against* slavery, was to be carried into effect, in its place, however conflicting in their results! On this point we have a thought or two to suggest.

"Strict construction" has nothing to do with the task of reconciling inconsistencies and contradictions in a written document. It can only expound its several parts by the help of its grammar, its lexicon, and the current use of the terms and phrases, according to the accredited literature within its reach. When it has done this, its functions are fulfilled. It is neither a legislative, nor yet an executive power. It is simply judicial, and its judgment is guided exclusively by *one rule*, namely, the *dead letter of the words*. It can not, like *other* tribunals, inquire after the *spirit*—the *main scope*, the *grand design* of the instrument, and make its minuter details bend into consistency with *that*, or give way to it. If the Constitution by the strict letter, has provided for the establishment of justice and the robbing of hen-roosts —if it has enjoined the preservation of liberty for ourselves and posterity, and the seizure and enslavement of every sixth man, woman, and child among us, if it has made it the duty of Congress to provide for the general defense, and to convert one half our citizens into enemies, if it has guarantied a republican form of government and has guarantied the perpetuity of a ruling oligarchy, if it requires us to guard the President's house from all danger, and to put five tons of Dupont's best gunpowder under it, and light the dry match that leads to it, "strict construction" with due gravity

and composure records it all, and reads off its record without a stammer or a changed muscle. *That* is its *verdict.*

But what shall the *executive* power do with it? Do? Why do nothing at all, of course, until impossibilities cease to *be* such. Let it rob the hen-roosts, according to law, and by judgment of Court, but take care to do it only *when*, and *as* it can *be* done, according to law, that is, in accordance with "*justice!*" Let it seize and chattelize its prescribed proportion, of our citizens, only taking care to do it in such a manner as to "secure the liberty" of all our citizens and "their posterity"—let it convert one half its citizens in one half of the States into enemies, but in such a way as to "promote the general welfare, and provide for the common defense"—let it "guaranty" or tolerate by "compromise" a ruling oligarchy of 250,000 men, to control seventeen millions, whenever it can be done in consistency with a "republican form of government," and without any "bills of attainder" or laws "impairing the obligation of contracts" by the authorities of the States. And let it blow up the President's house with gunpowder, whenever it can be done with perfect safety to that edifice! This is all that "STRICT CONSTRUCTION" can award, or authorize to be done, so far as the "peculiar" claim is concerned, and for the plain reason that *one* provision of the Constitution is as precious in its eyes as *another*, and each must stand valid upon the independent power of its own immaculate *words and syllables!*

For illustration's sake, let the *slave power*, stand before the Court, in the person of Shakspeare's relentless Jew, *Shylock*, demanding his pound of flesh, from the Christian merchant of Venice, to be cut out of his very vitals, "*according to the bond!*" The plea was a "strict construction" plea, and the Court was a "strict construction" Court. The sentence accordingly had to be rendered in favor of the plaintiff! The pound of flesh was his "*due*," and he might cut it out where he pleased! "*A Daniel come to judgment!*" triumphantly exclaims the revengeful Jew, as he whets his murderous knife for the slaughter "according to law!" But hold! rejoins the Judge. "*One pound*" is the judgment of the Court "according to the bond." At your peril, cut not a fraction *less* or *more!* And again. *Another* statute, says the Judge, provides that if a *Jew* do shed one drop of *Christian* blood, his life shall pay the forfeit! At this, the Jew lets drop his knife, and offers to withdraw his claim, and leave the Court. But hold! again, exclaims the "strict construction" Judge. *Another* law provides that if a Jew

conspires against the life of a Christian, that Jew shall die, and his estate be confiscated unto the State of Venice! Thou, Shylock, hast conspired, in open Court, against this Christian's life, and now, the sentence of this law must rest upon thee! "*A Daniel come to judgment*"—a thousand voices respond. "*A Daniel come to judgment! I thank thee, Jew, for learning me that word!*"

If "strict construction" *could* award to slavery what it *claims* under the Constitution of 1787–9, the return of fugitive slaves, the apportionment of representation upon the basis of slavery, the twenty years' tolerance of the African slave-trade, the quelling of refractory slaves by the national arm, the "reserved rights of the States" to fatten upon their pound of human flesh "according to the bond"—of what earthly avail could be the verdict *in favor* of those claims, so long as it must *accompany another* verdict, affirming the right and the duty of the Federal Government to "establish justice," "secure the blessings of liberty" and "provide for the common defense?"

We may understand, by this time, the *result*, (not to say, here, the absurdity,) of supposing the Constitution to contain provisions in favor of SLAVERY, and provisions to "secure the blessings of LIBERTY." *If it be so*, and if "strict construction" must thus determine, why then, it must determine, in effect—for it must *follow*—that the constitutional provisions in favor of slavery can be of no benefit to the claimants. The *verdict* they may have, and welcome. But the *uses* for which the verdict was sought, can not be reached, so long as the other—the conflicting provisions of the Constitution remain.

In no way then, can any *available* verdict in favor of the slave claim, be obtained, but by making it appear that *all* the provisions of the Constitution are in harmony with the slave system; that while *some* of them are distinctly in its FAVOR, *none* of them are decidedly AGAINST it. But this can not, with any show of decency, be pretended. And of course, the "peculiar" claim falls to the ground, even if it *were* so, that the argument of this chapter had not been fully sustained—which we do not admit.

Returning from this digressive supposition, (which we have made for the benefit of those who are inclined to split in two, with their convenient beetle and wedges arbitrament, every disputed question,) we insist that in the Court of "STRICT CONSTRUCTION" the Constitution of 1787–9 has been found to contain *no* guaranties or compromises in favor

of slavery, but a number of explicit provisions against it, fully authorizing the exercise of the Federal Power for its overthrow. We are now ready to meet the "peculiar" claim, at that other tribunal to which it has our leave to appeal. In our next chapter we shall see whether "the *spirit* of the Constitution" is more favorable to slavery than its *letter*.

CHAPTER III.

"SPIRIT OF THE CONSTITUTION."

THE CONSTITUTION OF 1787–9. *Considered in the light of its spirit, its objects, its purposes, its principles, its aims.*

1. Preliminaries—"Spirit of the Constitution" defended—Its province and authority as a rule of construction—An obvious but neglected distinction. 2. Spirit of the Constitution, as manifested by the instrument itself—by its Preamble—by its grant of powers—by its construction of the Federal Government—by its care of personal rights—by its provisions hostile to slavery—Spirit of the Preamble—Spirit of the powers conferred—Structure of the Federal Government—Security of personal rights—Provisions hostile to slavery—Affinity with Common Law—Specimens of Common Law—Its power. 3. Spirit of the Constitution, as attested by History, by civilians, and jurists—Extent of the National Power. 4. The Constitution construed—The "spirit of the Constitution" on the wool-sack. 5. Special pleadings, their fallacy.

SECTION I.

PRELIMINARIES.

There are but two different methods, or rules of construction, by which the meaning of a written document, like our Constitution, may be interpreted and explained. The one refers us to the LETTER—the other, to the SPIRIT. Having attended to the *former*, we come now to the *latter*. We open our eyes upon a wider field, and a more attractive one. A few particulars must be premised, and "the rules of the Court" understood. We are to try the cause by another set of maxims, now.

1. The language of the Constitution is not to be *excluded* from the present inquiry, though it is not *exclusively* to be depended upon, as it was at the lower Court. At the present Court, the words used in the document, are admitted as witnesses, but other witnesses are admitted along with them.

2. The prevailing spirit, the general scope, the leading design, the paramount object, the obvious purpose of the

instrument, constitute the *first* the *chief* point of attention. If any minor objects, collateral interests, incidental details, local designs, temporary arrangements, or doubtful and disputed provisions present themselves, all these are to be grouped together, as constituting *secondary* topics of inquiry.

3. The latter, or secondary class, are in the next place, to be disposed of, in the light of the former, or primary; are to be construed in such a manner as not to conflict with, or thwart them, or else they must be set aside, as inexplicable, impracticable, contradictory, or suicidal. Otherwise, very manifestly, (in case of discrepancies, and contradictions, to which all the written instruments of fallible men are subject) there will be to be witnessed, the sacrifice of the PREVAILING SPIRIT and PARAMOUNT OBJECTS of the instrument to petty interests and absurd details, or else we shall be obliged to see the Constitution, stultified by its palpable self contradictions and impracticabilities, precisely as (under a similar *supposition*) upon the principles of "strict construction" we have already seen done.

In other words, we should be driven back again, to that same Court of "strict construction" whose verdict and judgment we have already obtained, or to *no* construction, at all. For the very notion of "*construction*" supposes that something *needs to be* explained and determined, that had seemed anomalous, obscure, or doubtful. Construction, moreover must proceed by *some rule*. And to say that the "SPIRIT of THE CONSTITUTION"—in distinction from its *dead letter*, must furnish that rule of construction, is the same thing as to say that the spirit of the Constitution must *control* and *govern* that construction, so that every thing apparently conflicting with the spirit of the Constitution must either be so understood as to *agree with* it, or else be set aside to give *place for* it. To demur against *this* would be to *appeal from* the "spirit of the Constitution" to something else. And if neither the letter *nor* the spirit of the Constitution can guide us, it becomes a nullity.

4. In determining either the general spirit of any written instrument, or the meaning and intent of its particular details and specific provisions, a *distinction* is to be preserved between the spirit, design, or intentions of the *principal party* or parties interested in the document, who sign and seal it for ratification, as being *their own act*, and the spirit, design and intent of the persons employed to *draft* and prepare such an instrument, including, (it may be) the spirit, design and intent of a minority of the persons concerned, acting

with the draftsmen, in distinction from the main body concerned. The design of the *former* instead of the *latter* is the main thing to be ascertained. The testimony of the latter to the designs of the former, is to pass for what it is worth, in connection with other testimony, and no more.

Thus, in a *will*, the main thing is the design of the *testator*:—this is not to be confounded with the design of the penman of the will, closeted with a few of the heirs. The design of the parties to a written agreement, (or the main body of them, where large numbers are concerned,) is to be held quite distinct from the designs of the men employed to draw up the paper, in connection with a few others who may be near them. And "*We, the people of the United States*" who adopted the Constitution, and whose act and instrument it is, are not bound to concede that *our* design, in adopting and maintaining it, was, of necessity, identical with what *may* be proved to have been the design of the persons, or a *portion* of the persons, we employed to prepare it for us. What the Convention of 1787, or a portion of it, *intended to effect* by the Constitution, is not to be confounded with the designs, especially the PARAMOUNT OBJECT of THE PEOPLE *who adopted it.* The objects of the Convention, or members of it, may deserve our attention, and their testimony to the spirit of their times, may command respect. But *their* intentions are *not* to be substituted for the intentions of THE PEOPLE, or confounded with them. Nor are the intentions of a mere fraction, an oligarchy of the people, to pass for those of the people themselves.

With these needful memoranda, to prevent our confounding things that are radically distinct from each other, or putting them in places where they do not belong, we proceed to our inquries.

But how shall the "spirit of the Constitution" be ascertained?—First, by an inspection of the document itself:—second, by such external evidences as may present themselves.

SECTION II.

THE "SPIRIT" MANIFESTED BY THE INSTRUMENT ITSELF.

"Even a child is known by his doings." The spirit and temper of every man is apparent in his deportment and methods. The implements invented by men reveal *the spirit* in which they were conceived and framed, by the general purposes, whether of utility or of mischief that they were evidently adapted to subserve. No one need mistake a plough for a military weapon, nor a "field piece" for an utensil of

husbandry. The *spirit and design* of every piece of machinery is indicated by its form and structure. It may be perverted to unsuitable purposes, though made with a wise and benevolent design, and it may bear marks of having been wrenched and injured by the absurd process. By these common sense rules, let the "*spirit of the Constitution*" *be tested.*

"Spirit" of the Preamble.

The strict *letter* of the Preamble has been examined, and found hostile to slavery. And wherein can its "spirit" be distinguished from its letter? If in *any* thing it is in *this:* that the "*spirit*" of the paragraph, is, if possible, still more emphatically and unmistakably belligerent in its aspect, against slavery and imperative in its demands for its overthrow. If the claimant of constitutional slavery, in the Court of "strict construction," should have adventured to perk himself upon technicalities, and demand that "slavery" and its "abolition" should have been distinctly specified by name in the Preamble, in order to have made out a warrant for the congressional abrogation of the slave laws of the States, there can be no room for any suggestion of the kind, here. We are not at the Court of "strict construction" now, nor trammelled by its narrow rules. We rise from the *letter* to the *spirit*—from the mere *words*, to their fullest comprehension and extent. We recognize here, in addition to the mere *language*, the *spirit* that evidently breathes through that language, and moves and refreshes our inmost souls. We claim that the "spirit of the Constitution" speaking through this Preamble declares, *for itself*, its high aims and intents; that it speaks out in the *authoritative voice of law:*—that it utters no rhetorical flourish: no canting profession. We claim that each and every specification in the Preamble, is a DEFINITE PROVISION of the "*spirit of the Constitution*," as truly so as the clauses that tell how the judges of the Federal Court shall be appointed, and the votes cast for President and Vice President. We claim that "the spirit of the Constitution" ENJOINS on the government it creates and defines, such legislative, judicial, and executive action, as shall truly and effectually "form a more perfect UNION, establish JUSTICE, ensure DOMESTIC TRANQUILITY, provide for the COMMON DEFENSE, promote the GENERAL WELFARE, and secure the blessings of LIBERTY to ourselves and our POSTERITY." And no one doubts that this would *include* the abolition of slavery. Whoever may carp and cavil about technicalities and

words, no one with "the spirit" of a man in him will deny that "*the spirit*" of this Preamble requires of the Government created by it, the overthrow of slavery among "the People of the United States."

"SPIRIT" OF THE POWERS CONFERRED.

And this is still further proved by the ample powers bestowed upon Congress, to carry the declared objects and provisions of the Constitution into effect—to "make all laws necessary *and* proper" for that purpose.—[*Art. I. Sect.* 8, *Clause* 17.] Had the "spirit" of the Constitution even *apparently* failed to clothe the Government of its creation, the instrument of its high purposes, with the requisite *powers* to do the things declared to be the main object of the Constitution, there might have been some *apparent* ground for a doubt. But certainly there can be no rational or magnanimous doubt, now. When a parent charges a child with the transaction of a certain piece of business, declaring with precision and emphasis, the *main objects* he wishes to have him "*secure*," and then actually puts into his hands all the needed implements for the task, including his own well executed power of attorney authorizing him to act in that precise direction, what candid man could doubt that the "spirit" of that parent and of his instructions was sufficiently revealed by these acts? The Constitution, as the parent of the Federal Government, has directly and explicitly declared the main work and business of that Government, in the specifications of the Preamble. Then in the clause above cited, the parent puts into the hands of the child his "power of attorney" fully vesting him with power to do the work described. How preposterous, after all this, to doubt, either the *legal authority* of the child to do the *very errand* he was sent upon, or the "*spirit*" of the parent's instructions!

If the positive and unequivocal declaration, by the Constitution, of its MAIN OBJECT in establishing the Federal Government, can not be understood to be *binding*, what part of the Constitution *can* be held to be binding? And if that declaration of its main object, thus connected with the explicit grant of the *powers* necessary for its accomplishment, can not reveal the "spirit of the Constitution," in what possible way *could* it be revealed?

To say that it should have been revealed by the technical terms "*slavery*" and "*abolition*" would be the same as to say that the CONSTITUTION should have been a STATUTE BOOK. It would be saying, in effect, that the "*spirit* of the Constitution" can reveal to us *nothing*, and that we must go back

to the *dead letter* and to "strict construction" for all our light on the subject! More than all this, it would be to deny that even strict construction could guide us—for the words "slavery" and its "abolition" are neither more plain nor emphatic, than the words *injustice* and *justice*, and a "strict construction" of the former could not be more explicit than a strict construction of the latter.

Men may say, if they please, that the *letter* of the *New Testament* does not abolish *slavery*, though such a statement would not evince a very minute or extensive acquaintance with *the power of human language, the meaning of words.* But very few are so hardened or obtuse as to deny that the "*spirit*" of the New Testament abolishes slavery. It is scarcely less evident that the "*spirit*" of the Federal Constitution abolishes slavery, or at least, authorizes and requires the Federal Government to do so.

"Spirit of the Constitution," *As revealed in the structure of the Federal Government.*

The "*spirit*" of every Constitution of civil government is indicated by the very frame work of the government it creates or authorizes. The "spirit" of the French Constitution is seen in the French Government. The "spirit" of the British Constitution is seen in the distinctive features of the British Government. If the "spirit" of any Constitution of government be monarchical, the government will be essentially monarchical. If the "spirit" of the Constitution be aristocratic, the structure of the government will be aristocratic. If the "spirit" of the Constitution be democratic, the form of the government will be democratic. And if the "spirit" of the Constitution partake of a mixture of these three elements, the form of government, will exhibit a like mixture. If the "spirit" of any Constitution be "pro-slavery" *that* spirit too, will be revealed in the *structure of the government.* Let the "spirit" of the Constitution be tested by this rule.

In what particular does the *structure* of the Federal Government betray the pro-slavery "*spirit*" of the Constitution that gave birth to it? Wherein does it establish, or even recognize that "peculiar" *caste* that now claims its sanction and its guaranty? In what part of the instrument do you find any mention, either of slavery, or of slaves—of "*white*" citizens, or "people of *color?*" In a former chapter we have shown that not even the *condition* exclusively, or distinctively of the slave, is described in the clause commonly cited for that purpose.

No distinction of *color*, or of *race*, or *parentage*, is specified in the Constitution, among the qualifications, either of *voters* under the Constitution for the highest officers of the Government, nor among the qualifications of the officers themselves. There is nothing in the Constitution that prevents negroes from voting for President, Vice President, and members of Congress, on the same level with white citizens, and in many of the States, they *do* vote for those officers. There is nothing in the Constitution that disqualifies a negro from holding any office under the Federal Government, from the highest to the lowest, civil, military, legislative, judiciary, or executive. A negro may be constitutionally appointed Chief Justice of the United States, or Minister Plenipotentiary to any foreign Court. If the people of any congressional district in this Union should choose a negro to represent them in the House of Representatives of the United States, he would be constitutionally entitled to a seat there. If the legislature of any State in this Union should select a negro to represent the State in the Senate of the United States, the Federal Constitution secures him a seat there, on an equal footing with a Webster, a Clay, or a Calhoun. And if the People of the United States or a majority of them, (the majority of the people of the thirteen non-slaveholding States, for example) should choose a full blooded American born negro, to be President of the United States, he would be the constitutional President, holding the same station and wielding the same powers held and wielded by a Washington, a Jefferson, or a Madison.

This feature of the Constitution is the more remarkable on account of its agreement with the Articles of Confederation that preceded it, and especially when it is remembered that in the Congress of 1778, in which those Articles were framed, a motion was *unsuccessfully* made to *amend* the phrase "free inhabitants" by inserting between them the word "white"—thus deliberately settling the question that the CASTE of COLOR should have NO PLACE nor recognition in the National "Compact." And we have no account of any attempt in the Federal Convention of 1787, to engraft upon the new Constitution, the contrary principle.

Thus absolutely certain is it that the "SPIRIT OF THE CONSTITUTION" is the spirit of human equality, directly and specifically hostile to the spirit of caste, especially to a caste founded on the circumstance of *color*, of *blood*, of *race*, or of *descent*. Contrast this "spirit of the Constitution" with that other spirit that cries out "*amalgamation*" at every attempt to

make the State Constitutions, even in the non-slaveholding States, *correspond* with the Constitution of the United States in this respect. Then say whether the "spirit of the Constitution" be not identical, in this vital particular, with that spirit of thorough "abolition" that is denominated the "spirit of fanaticism" and the "spirit of amalgamation" now!

Who does not intuitively know that if a "guaranty" of slavery, or a "compromise" with it were to have been introduced into the Constitution of the United States, one of the most essential points, one of the most ready expedients (and the one least calculated to meet with effective opposition) would have been the introduction of the word "white" among the qualifications of voters and officers? If *even this* could not be attempted, with a hope of success, *what could?* Who does not know that one of the highest and most difficult points of attainment, even in an "ultra modern abolitionist," a point proverbially difficult to be reached, is the point of harmonious affinity with the "spirit of the Constitution," as thus revealed?

The "*spirit of the Constitution*" utterly abjures the *caste itself* upon which the whole *slave system is based*, takes the despised negro by the hand, and seats him indiscriminately around the ballot box among his paler brethren, and holds out before him, to incite his manly emulation, the highest summits of official station in her power to bestow, the highest seats in the National Government itself. And are we to be told that this *same* "spirit of the Constitution" has "guarantied" the perpetual degradation and chattelhood of the colored man—that it authorizes the hunting of him, through all the States in the Union, "*without due process of law*" * or jury trial, as though he were a wild beast, or a noxious reptile? Did ever effrontery itself, before adventure to urge such a claim as this?

With the feature of the Constitution just noticed, the whole structure and organic frame work of the Federal Government agrees, and without that feature that structure *could not be* what it confessedly *is*, and what is the pride of every intelligent and high minded American to *represent it*—a FREE Government—founded on the supremacy of THE PEOPLE, the exclusion of MONOPOLIES, the annihilation of PRIVILEGED ORDERS, and the absence of CASTE.

The same "spirit of the Constitution" that puts the color-

* This one inhibition of the Constitution, by the bye, is enough to settle the unconstitutionality of the Act of Congress of 1793, and of the late decision of the United States Court in the case of Prigg vs. Pennsylvania.

ed man upon a level with the white, disdaining even an allusion to any distinction between them, as the spirit that is manifested in its speaking in the name of the THE PEOPLE, (the whole of them, not a favored class) its derivation of the government *from* the people, the election of the officers of the government, either directly or indirectly, by the people—the accountability of the highest officers *to* them, including the liability of the President himself to impeachment and trial, the provisions for frequently returning elections, the general eligibility of the people to office, without distinction of caste—the reservation *to* the people (either directly or through their State Governments) of all the powers not delegated in the Constitution itself, These features, of the Federal Government, the glory and the boast of every American, can not be separated from the feature that constitutes the same government the unalterable and uncompromising enemy of the *cord of caste* and consequently of that abominable SLAVE SYSTEM with which that caste is identified, and by which it is created and preserved.

If the "spirit of the Constitution" has provided for us "a republican form of government" then that "spirit of the Constitution" has entered into no "compromise" with slavery, and, so far from providing for any "guaranty" of *slavery*, has "guarantied to every State in this Union a republican form of government" by the definition and on the model of *the Federal Government itself*, a *definition and a model that places the black man on an equality with the white.*

Before dismissing this topic, it may be proper to notice *one* fact, in the structure of the Federal Government, that has been claimed as being friendly to slavery. The apportionment of direct taxes and representation has been considered in the light of an arrangement granting an undue share of political power to the slave States, giving them an advantage over the rest, and thus holding out as it were, a premium to slavery over freedom. But the abolition of slavery by the slave States would greatly increase their political power, as they might then make citizens of all that class of their population, of whom they can now reckon only three-fifths, but might then reckon the whole. So that the present *reduced* rate of three-fifths *instead* of the whole, has been regarded, by some, as a *rebuke* and *discouragement* of slavery, instead of a premium bid in its favor.

This question, we have no occasion to discuss, now. We need not deny that the arrangement is unequal, in its bearing on the free labor States, that its operation gives the slave

States more power than they ought to possess, and that that power is wielded in support of slavery. But from this it does not follow that "the spirit of the Constitution" contemplated this result, or could look upon it with favor. The results of particular business arrangements and details, are often the opposite of those contemplated and intended by those who enter into them. No one, at that time, supposed that slavery could continue to the present period, and its perpetuity could not have been the object of that provision. Could it even be proved that such was the design of some in the Convention, who succeeded in shaping the clause to their liking, it would not follow that a majority of the Convention adopted it with that view. And if they did, it would not follow that THE PEOPLE (including those of the North,) *for whom* the paper was drafted, and who adopted it, understood and approved it, in that light, or for such an object. We are litigating before a Court, *now*, that can look beyond the mere *words*, to the "*spirit*" and *intent*. And it would require strong evidence to prove that the majority of the people *intended* to put themselves under the control of the petty oligarchy that now rules them! Or if it *were* so, the "sober second thought" of their famous "*amendments*" for the better security of freedom, cuts off *whatever* of a pro-slavery character might be detected in this clause of the original instrument.

And waiving even all this, we might cut the matter short by a dilemma that may serve to silence the claim under this clause. This provision either harmonizes with *all the other* features that characterize the structure of the Federal Government, or it *does not*. If it *does*, it can not be claimed as a "guaranty" or even a "compromise" in favor of slavery. If it *does not*, why then it becomes an excresence, an anomaly; and this isolated, obscure, and litigated clause, has to be disposed of, (like *other* incongruities) in the light of those outstanding, unambiguous, unmistakable features, by which "*the spirit of the Constitution*" is to be ascertained. This is the very process of construction or interpretation, by the "spirit of the Constitution;" for this very purpose, we are now in Court, and shall proceed to cite *other* evidences in proof that the "spirit of the Constitution" is what we claim it to be.

"Spirit of the Constitution" in its care of personal rights.

The *spirit* of any Constitution of civil government is not more clearly discerned in the structure and form it gives to

the government itself, than in the bearing of its provisions upon the security and sanctity of individual, *personal rights*. Here lies the pith and the "spirit" of civil government, after all. A government is good or bad, free or despotic, accordingly as its provisions are adapted, either to protect and to secure the *rights of individual human beings*, (especially those most in need of protection) or, on the other hand, to invade and trample upon those rights, or leave them insecure, or wink at the existence of abuses, usages, laws, and customs, by which those rights are taken away, denied or impaired.

Now *slavery*, as it exists in the American slave States, is the most perfect possible specimen of a system, upheld by government, in which *all the rights* of its victims are trampled down and denied, and the liberties of *all others* made insecure.

To learn then, whether the "spirit of the Constitution" is a spirit that can enter into a "compromise" with slavery, or "guaranty" its existence, we have only to learn by its provisions what value it places upon *individual security—personal rights*.

And here, we might cite again, the specifications of the Preamble, if it would not seem a repetition to do so. But there are minuter provisions in the instrument, that we must not overlook—provisions utterly at war, both in their letter and their spirit, with the usages that constitute slavery and that are requisite to sustain it.

The Constitution of the United States guaranties those inestimable and inalienable *rights of conscience* which slavery wholly denies its victims and can not afford to secure—does not permit to be exercised—by *any* portion of the citizens in those States where it bears sway. [Amendments, Article 1.]

The Constitution provides for "*the freedom of speech and of the press*." [Amendments, Article 1.] But freedom of speech and of the press are not only prohibited to slaves, but to all who plead their cause, or disseminate the fundamental principles of human rights. This is done on the express ground, and for the known and admitted reason that slavery can not exist where those rights are thus exercised and maintained.

The Constitution expressly recognizes "the right of the PEOPLE" (without distinction of caste or color) "peaceably to assemble, and to petition the Government for a redress of their grievances," [Amendments, Article 1.] But not only the slave States, but the Congress of the United States, have directly and explicitly denied the right of the slaves (the mass

of the laboring people in half the States) to petition Congress, they have virtually and practically denied the right of petition to all who petition for the abolition of slavery, and this has led, in one memorable instance, (the short session of 1841,) to the suspension of the right of petition, in all citizens, and on all subjects, upon the good pleasure of the President, as indicated in the topics of his Message! All this has been done on the assumption of the correctness of those prevalent Constitutional expositions that make the Federal Government the patron and the servant of the slave power. But since the "spirit" and letter of the Constitution are grossly and manifestly outraged by these proceedings, we have abundant evidence that the "spirit of the Constitution" and the spirit of slavery are antagonisms that can never be reconciled.*

We must remember here, that these constitutional provision for the security of personal freedom, are contained in the first article of the *Amendments*, and we must bear in mind that *amendments* exert a corrective and repealing power, over all the provisions of the *original instrument* which may be found to conflict with them. But *all* the specifications that

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* In further corroboration of the *fact* that the *commonly prevalent constructions of the Constitution* lie at the bottom of all these assaults, in high places, not only upon the right of petition, but upon the right to assemble peaceably for that purpose, and to discuss public measures, as well as the freedom of speech and of the press, we make a few citations from the speeches, &c., of the constitutional expositors, so confidently relied upon.

"Discussion implies deliberation, deliberation is preliminary to action. *The People of the North have no right to act upon the subject of southern slavery, and therefore* THEY HAVE NO RIGHT TO DELIBERATE—NO RIGHT TO DISCUSS."—*Clay's Speech*, 1837.

Fresh evidence that the *prevalent expositions* of the Constitution can not, with *safety* be received by a *free People!* The late President Harrison, in his famous speech at Vincennes, May 25, 1835, and approvingly referred to, in his letter to James Lyons, June 1, 1840, as containing the sentiments he still held, goes into the argument at length. He first assumes that the Constitution provides for the return of fugitive slaves, &c. &c. He then adds:

"Now can any one believe that the instrument which contains provisions of this kind," &c. &c., "should, at the same time, *authorize* (the citizens of non-slaveholding States) to *assemble together, to pass resolutions and adopt addresses*, not only to encourage the slaves to leave their masters, but to cut their throats before they do so. I insist that if the citizens of the non-slaveholding States can avail themselves of the article of the Constitution which prohibits the restriction of speech or the press to PUBLISH ANY thing injurious to the rights of the slaveholding States, that they can go to the extreme I have mentioned, and effect any thing further that writing and speaking could effect. But, fellow citizens, *these are not* the principles of the Constitution. Am I wrong in applying the term *unconstitutional* to the measures of the emancipators?"

Gov. Marcy, of New York, and Gov. Everett, of Massachusetts, in their messages to the Legislatures of those States, took similar ground, suggesting the propriety of suppressing anti-slavery meetings and publications by law. Such are the *conclusions* deduced from the *premises* of a constitutional "compact," "compromise" and "guaranty" of slavery. The security of American liberty rests in the fact that the premises are unsound. Not even the gigantic powers of John Quincy Adams have yet sufficed to restore the right of petition, while such constitutional expositions prevail. The rights of petition, free speech, and free press, would indeed be strange and incredible anomalies, in a government pledged to tolerate and even to sustain slavery!

have ever been claimed as being *favorable* to *slavery* are contained in the *original instrument*, and *not* in the Amendments. So that if the Constitution as formed by the Convention of 1787, failed to breathe the "spirit" of security to personal rights, and of consequent hostility to slavery, yet the PEOPLE afterwards, took care to infuse that "spirit" into the organic law of their Federal Government, through their Amendments.

On the same high vantage ground as "AMENDMENTS," overtopping and overlooking, with a supervisory eye, *each* and *every one* of the provisions claimed as "guaranties" or "compromises," by the slave power, we find likewise the provisions, forbidding the deprivation of life, *liberty*, or property, in the case of any "*person*" "without due process of law," (Amendments, Article 5,) securing "in all criminal prosecutions," the "right" of the accused to "a speedy and public trial by jury," &c. &c., (Amendments, Article 6,) securing the same right of jury trial "in suits at Common Law, when the value in controversy shall exceed twenty dollars," (Amendments, Article 7,) the inhibitions of "excessive bail —excessive fines—cruel and unusual punishments," (Amendments, Article 8,) the recognition of rights in the People, not particularly enumerated in the Constitution, (Amendments, Article 9,) the reservation to the *People*, (directly or through the States,) of powers not delegated to the United States, by the Constitution. Is there any thing doubtful or ambiguous in the "SPIRIT" of constitutional provisions like these? Or does that "spirit" harmonize with such constitutional expositions as we find embodied in the absurd enactment of 1793, and the still more preposterous decision, of the Supreme Court, in the case of Prigg versus Pennsylvania? Had the "*spirit*" prevailed, in that Congress and in that Court, which could not permit the hazard, to a citizen, of the loss of "twenty dollars," in a litigation, in a Court of law, without a jury trial, would the civilized world have been astounded with the spectacle of a professedly free nation, not one citizen of whom is held legally free from a seizure of his person by any individual slaveholder "*without* due process of law," and the reduction of him to a chattel personal for life, with the "attainder of blood" in his posterity forever, and all this *without benefit of a jury trial?* And without the "reserved right" either of "the People" or "of the State,"*

* "THE RESERVED RIGHTS OF THE STATES" are magnified into prodigies, when the right of the slave States to chattelize American citizens, and to send their biped blood hounds into every free State, to kidnap them, is to be maintained! But the "reserved

to interpose the protection of an act providing, in such cases, a trial by jury? What says "*the spirit of the Constitution*" to questions like these?

There is *another* authoritative AMENDMENT of the Constitution sufficient, of itself, to annihilate *whatever* of the poison of a pro-slavery "compromise" or "guaranty"—more or less virulent—might have been ambiguously smothered into the original "compact." In the multiplicity of our constitutional weapons against slavery, we had overlooked it while before the Court of "strict construction," in our second chapter. But we must give it place, now.

"The right of the PEOPLE to be SECURE in their PERSONS, houses, papers and effects, against unreasonable searches and SEIZURES, shall *not be violated;* and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the *place* to be searched, and the *persons* or things to be *seized*."—*Amendments, Article* 4.

Whether construed by "strict construction" or standing, in its own light, as a specimen of the "spirit" of the Constitution itself, no provision could be more significant and conclusive than this. Had it been penned with the special design to prevent and forever foreclose and annul any such legislation as the act of Congress of 1793, or to brand with the stamp of unfaithfulness to the Constitution such a judicial decision as that of the United States Court, in the case of Prigg vs. Pennsylvania, what could have been penned, more to the point? "*The People*" and no particular caste of them are to be thus secured from "unreasonable seizures." Yet the Act of Congress, and the judicial decision, leaves *no class of the people* "*secure*" from the most "unreasonable" and felonious "seizures" without even the formality of any "warrant" at all, in which a description of "the place to be searched, and the *persons* or things to be seized" could be introduced.

To the same purport, as indicative of the "spirit of the Constitution" in its care of individual rights, we may cite some further provisions of the original instrument itself. "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." (Art. I., Sect. 9, Clause 2.) But no "privilege of the writ of habeas corpus" or any thing else comes to the benefit of any one suspected of the crime

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rights of the States" amount to nothing at all, when the rights of the free States to *protect their own citizens* (by "jury trial," by "habeas corpus," by "due process of law,") against unlawful seizures are to be judicially put down! Thus must it needs be, *so long as the present constitutional expositions obtain*. A pro-slavery Constitution could do nothing less!

of having descended from a slave mother or of any person, man, woman, or child, white or colored, whom any slave-holder may choose and presume (*without* presentment of jury, or writ of magistrate) to claim and to seize as his *slave!* This, in substance, is the decision of the Supreme Court of the United States, under the Act of Congress of 1793; and the decision and the Act are both based upon the common construction of the provision in the United States Constitution, (Art. 4, Sect. 2, Clause 3,) concerning "persons held to service and labor." In our Chapter II, we have shown that the *words* of this provision, on the principles of "*strict construction*," furnish no warrant for such an Act of Congress —for such a decision of Court. Appeal has accordingly been made to the "SPIRIT OF THE CONSTITUTION"—forsooth! to reverse the decision! And what has "THE SPIRIT OF THE CONSTITUTION" to say, *on this question?* How is it? When the kidnapper of the South, with his bull dogs, (biped or quadruped,) come prowling around our Northern villages and hamlets, is it a "*case of rebellion or invasion*" if we refuse to submit to them, or even if we trap them, or trip up their heels? Does the "public safety require" us to be dragged away, without indictment, or "due process of law" and sent to the Southern rice-swamps without a jury, and without "the privilege of the writ of habeas corpus?" Does "the spirit of the Constitution" agree with this? If it *does*, let the People understand, that they may appreciate its benefits! If it does not, let the "spirit of the Constitution" be better understood, and no longer identified with the spirit of legalized Lynch law, and made, by decision of the Supreme Court, the standing commission of the man-thief, setting all the sacred guaranties and safe-guards of personal liberty at defiance!

"The trial of all crimes except in case of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed," &c.—*Article III., Sect.* 2; *Clause* 3.

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on testimony of two witnesses to the same overt act, or on confession in open Court."—*Art. III., Sect.* 3, *Clause* 1.

The "trial by jury" is here recognized, in the original instrument itself. And treason is to be defined and punished by the most liberal and lenient rules. What a contrast to the sanguinary and summary codes of slavery! Expositors of the Constitution who make it a "compromise" or a "guaranty" of slavery, have gravely defined "*treason*" to

consist in freedom of speech and of the press directed against slavery, or in discussion of its character! At every point, "the spirit of the Constitution" and "the spirit of slavery" come in harsh collision. Who can conceive of the very "*spirit* of this Constitution" making a "compact," a "compromise" with slavery—taking it by the hand—making amicable terms with it—and signing a "guaranty" of the inviolability, the perpetuity of its Lynch legislation—its enacted abrogation of all law—its annihilation of the *same rights* that the "spirit of the Constitution" was *so solicitous to protect?* No marvel that those who can quote the "spirit of the Constitution" in favor of slavery, can likewise quote the spirit of the Saviour's golden rule, for the same purpose!

"Spirit" of Constitutional Provisions hostile to Slavery.

Full justice to "*the spirit of the Constitution*" as exhibited by the distinguishing characteristics of its fundamental provisions, could not be done without referring distinctly to those provisions which we have a right to claim as being, both in their letter and spirit directly levelled against the specific things wherein slavery consists, and providing for their removal:—referring, likewise, to those specific grants, to Congress, of the Constitutional powers by means of what that particular category of evils may be removed.

Under this head we might class some of the provisions of the Constitution already adverted to, particularly the provision, (Amendments, Art. 5,) that "No person shall be deprived of life, liberty, or property, without due process of law," and likewise Amendments, Art. 4. Scarcely less significant, in their bearing upon slavery, are the guaranties of the rights of conscience, freedom of speech and of the press, &c. But we allude now, more especially, to the guaranty, to every State in the Union, of a republican form of government, the restrictions of State power inhibiting orders of nobility, oligarchies, impairing the obligation of contracts, laws of attainder, State wars, troops in time of peace, and withholding the immunities of citizens from citizens of other States: connected as these provisions are with the conferring of ample powers upon Congress for regulating both foreign and domestic commerce, including the commerce in slaves, exclusive legislation over the Federal District, the needful regulation and government of Territories, power to carry out all the provisions and objects of the Constitution, but no power to establish or to maintain slavery in District, Territory, or

elsewhere. Of the "*spirit*" manifested in these provisions there can be no rational doubt.

It may be objected, perhaps, to our citing these provisions in proof of the anti-slavery spirit of the Constitution, that some of them are among the disputed points for the proper construction of which we are seeking, in the "spirit of the Constitution" (when ascertained) an umpire. So that we must not admit them as witnesses in a case wherein they themselves, are to be tried. Be it so, then, that these features of the Constitution are to be put on trial before the Court, and, as parties concerned, must not be witnesses in their own cause. Having a case at Court, they have an undoubted right to *appear* there, and in their own proper names and habiliments. If the bare announcement of their names, the cut of their garments, their countenances, form, gait, and shibboleth of speech, should reveal to the Court and jury their affinity with the "spirit of the Constitution" and dissimilarity from the spirit of slavery, why—there is no help for *that*. The old fables may represent Justice as being blindfold, but Judges and jurors, in *this* Court, are permitted to have *eyes*.

The Spirit of the Constitution is the Spirit of the Common Law.

Another internal evidence that the "spirit of the Constitution" is the spirit of Liberty, in other words, the spirit of uncompromising hostility to slavery, is to be found in the fact that it is identical in its character and arrangements, with the "spirit" of the Common Law, in the presence and at the touch of which, *slavery* instantly expires.

We will, *first*, establish the fact that the "spirit of the Constitution" is identical with the spirit of the Common Law, and, *then*, the fact that the Common Law never tolerates, for a single moment, or under any conceivable circumstances, the existence of slavery.

"The Common Law is the grand element of the United States Constitution. All its *fundamental* provisions are instinct with its spirit; and its existence, principles, and PARAMOUNT AUTHORITY, are pre-supposed and assumed throughout the whole. The Preamble of the Constitution plants the standard of the Common Law immovably on its foreground:—

"'We, the People of the United States, in order to ESTABLISH JUSTICE, &c., do ordain and establish this Constitution,' thus proclaiming *devotion* to JUSTICE, as the controlling motive in the organization of the Government, and its secure establishment the chief end of its aims. By this most solemn recognition, the COMMON LAW, that grand legal embodiment of 'JUSTICE,' and fundamental right—was made the ground work of the Constitution, and intrenched behind its strong munitions. The second clause of Sect. 9, Art.

1; Sect. 4, Art. 2, and the last clause of Sect. 2, Art. 3, with Articles 7, 8, 9, and 13 of the Amendments, are also express recognitions of the COMMON LAW as the PRESIDING GENIUS of the Constitution."—*Weld's Power of Congress, &c. page* 13.

"Who needs be told that slavery makes war upon the principles of the Declaration of Independence and *the spirit of the Constitution*, and that these and the principles of *Common Law* gravitate towards each other with irrepressible affinities, and *mingle into one?* The *Common Law* came here with our pilgrim fathers; it was their birthright, their panoply, their glory, and their song of rejoicing in the house of their pilgrimage. It covered them in the day of their calamity, and their trust was under the shadow of its wings. From the first settlement of the country, the genius of our institutions and our national spirit have claimed it as a common possession, and exulted in it with a common pride. A century ago, GOV. POWNALL, one of the most eminent constitutional jurists of colonial times, said of the COMMON LAW—'In *all* the colonies, the Common Law is received as the *foundation and main body of their law.*' In the Declaration of Rights made by the Continental Congress, at its first session, in '74, there was the following resolution:—'Resolved, that the respective colonies are entitled to the COMMON LAW of England, and especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of *that law.*' Soon after the organization of the General Government, Chief Justice Ellsworth, in one of his decisions, upon the bench of the United States Supreme Court, said, 'the *Common Law* of this country remains the same as before the revolution.' Chief Justice Marshall, in his decision in the case of Livingston vs. Jefferson, said, 'When our ancestors came to America, they brought with them the *Common Law* of their native country, so far as it was applicable to their new situation, and I do not conceive that the revolution in any degree changed the relations of man to man, or the law which regulates them. In breaking our political connection with the parent State, we did not break our connection with each other.' [*Hall's Law Journal, New Series.*] Mr. Duponceau, in his 'Dissertation on the Jurisdiction of Courts, in the United States,' says, 'I consider the *Common Law* of England, the *jus commune* of the United States. I think I can lay it down as a correct principle, that the COMMON LAW of England, as it was at the time of the Declaration of Independence, still continues to be the NATIONAL LAW OF THIS COUNTRY, so far as it is applicable to our present state, and subject to the modifications it has received, here, in the course of half a century.' Chief Justice Taylor of North Carolina, in his decision in the case of the State vs. Reed, in 1823, Hawk's N. C. Reps. 454, says, 'A LAW OF PARAMOUNT OBLIGATION TO THE STATUTE was violated by the offense—COMMON LAW, founded on the LAW OF NATURE, and confirmed by REVELATION.' The *legislation* of the United States abounds in recognitions of the principles of the Common Law, asserting their *paramount binding power.* Sparing details, of which our national State papers are full, we illustrate by a single instance. It was made a *condition* of the admission of Louisiana into the Union, that the right of trial by jury should be secured to all her citizens—the United States Government thus employing its power to enlarge the jurisdiction of the COMMON LAW as its great REPRESENTATIVE."* —*Weld's Power of Cong. &c., page* 14.

Having thus identified the "spirit of the Constitution," and (along with it) the "spirit" of American Jurisprudence, with

* Another fact, conclusive of the illegality of slavery in Louisiana, for this was *equivalent* to a condition that she should abolish slavery. In this particular, at all events, Congress seems to have recognized its right and duty to secure to Louisiana, "a republican form of government."—*Author.*

the "spirit" of the Common Law, we will now look at the bearing of this spirit of the Common Law upon the American Slave System.

Specimens of Common Law.

"The Common Law knows no slaves. Its principles annihilate slavery wherever they touch it. It is a *universal, unconditional, abolition act.* The declaration of Lord Chief Justice Holt, that, 'by the Common Law no man can have property in another,' is an acknowledged axiom, and based upon the well known *Common Law* definition of property, viz., '*The subjects of dominion or property are* things, *as contra distinguished from* persons.'"—*Ib. page* 13.

The following are also among the maxims of the Common Law:

"The law favors liberty."—*Wood's Inst. Book* 1, *chap.* 1, *page* 25.—*Coke's* 1*st Inst. Book* 124, *and* 2*d Inst.* 42, 115.

"The law favoreth a man's person before his possessions."—*Noycs' Maxims, pages* 6 and 7.

"Whenever the question of liberty seems *doubtful*, the decision must be in favor of liberty."—*Digest Lib.* 50, *Tit.* 17, *Leg.* 20.

"The law therefore which supports slavery and opposes liberty, must necessarily be condemned as cruel, for every feeling of human nature advocates liberty. Slavery is introduced through human wickedness, but God advocates liberty, by the nature which he has given to man. Wherefore, liberty torn from man, always seeks to return to him, and it is the same with every thing which is deprived of its native freedom. On this account it is, that the man who does not favor liberty, must always be regarded as unjust and cruel; and hence the English law, always favors liberty."—*Chancellor Fortescue, de laudibus legum. chap.* 42, *page* 101.

"Law favoreth liberty and dower. Law regards the *person* above his possessions—*life and liberty, most.*—*Principia Legis et Equitatis, p.* 56.

"Those rights which God and nature have established, and which are therefore called natural rights, *such as* life and LIBERTY, *need not the aid of human laws, to be more effectually vested* in EVERY MAN, than they are. Neither do they receive any additional strength, when declared, by the municipal laws, to be inviolable. On the contrary, NO HUMAN LEGISLATION HAS POWER TO ABRIDGE OR DESTROY THEM, unless the owner shall himself commit some act, that amounts to forfeiture."—*Introduction, Sect.* 2.

"The law of *nature*, being coeval with mankind, and dictated by God himself, is of course *superior* in *obligation to any other.* It is binding over all the globe, in all countries, and *at all times.* No human laws have any VALIDITY, if contrary to this, and such of them as are valid, derive all their force, and all their authority, mediately or immediately, from this original."—*Ib.*

"The *inferior* law must give place to the *superior*—man's laws to God's laws."—*Noyes' Maxims.* If therefore any *statute* be enacted, *contrary* to these, it ought to be considered of no authority in the laws of England."

"Usage and custom, generally received, have the force of law."—*Hale's Hist. of Common Law, p.* 65. "Because custom, derived from a *certain reasonable cause*, takes the place of law."—*Littleton Lib.* 2, 10. *Sect.* 149. "But when custom is adopted *without reason*, it ought rather to be called usurpation than custom." "Because, in judging of customs, *strength of reason* is to be considered, and not *length of time.* The reason which sup-

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ports them ought to be regarded, and not the length of time, during which they have prevailed."

"Two incidents are indispensable to validity of custom or usage. 1st. A reasonable commencement, (for all customs or prescriptions which are against reason are void.) 2d. Continuance without interruption."—*2d Inst. p.* 140.

"Evil customs ought to be abolished."—*Littleton* 2*d Inst.* 2 *Chap.* 2, *p.* 141. On which Sir Edward Coke remarks, that "every use (or *custom*) is evil, which is against reason."

"Where the foundation is weak, the structure falls."—*Noyes' Maxims, p.* 5. "What is invalid from the beginning, can not be made valid by length of time."—*Ib. p.* 4.

"The reasonableness of law is the soul of the law."—*Jenks. Cent.* 45.

"This law is written upon the heart of every man, teaching him what to choose and what to refuse. What is written by reason in the heart, can not be effaced; neither is it liable to *change*, either from place or time, but ought to be preserved every where, by all men. For the laws of nature are *immutable;* and the reason of their immutability is this, that they have for their foundation, the nature of things, which is always and every where the same." —*Doct. & Stud. p.* 2.

"*Against these*, there is NO PRESCRIPTION, or STATUTE, or USAGE: and should any be ENACTED, they WOULD NOT BE STATUTES, or usages, but CORRUPT CUSTOMS."—*Ib. p.* 5.

"If any human law shall allow or require us to commit it [murder, mentioned by way of illustration,] *we are bound to transgress* that human law, or else we must offend both the natural, and the divine."—*Blackstone.*

"If it be found that a former decision (respecting a point in Common Law,) is manifestly ABSURD and UNJUST, it is declared, *not* that such a sentence was BAD law, but that it is NOT law."—*Ib.*

"It is generally laid down that *Acts of Parliament*, contrary to *reason* are VOID."—*Ib.*

"Prof. Christian, the distinguished annotator of Judge Blackstone, decides that a Judge ought to resign his office, rather than allow himself to be the organ of the execution of an iniquitous law."

"Derived power can not be superior to the power from which it is derived." —*Noyes' Maxims, p.* 3.

"The *lawful* power is from God alone, but the power of *wrong* is from the devil and not from God; and whose soever work a king shall do, *his* servant he is, whose work he does. Wherefore, when he does justice, he is the minister of the Eternal King, but when he does unrighteousness, he is the servant of the devil." *Bracton*, Lib. 3, *Chap.* 9, *p.* 106-7.

"For he is called a king (a ruler,) for ruling righteously, and not because he reigns. Wherefore he is a king, when he governs with justice, but a tyrant, when he oppresses the people committed to his charge."—*Ib.*

Power of the Common Law.

The reader will please to understand that he has been perusing extracts, *not* from the "fanatical" proceedings of an anti-slavery Convention, but from the venerated and authoritative volumes of the COMMON LAW—the same Common Law that is so manifestly the basis and ground work of all the *fundamental* provisions of the *Constitution of the United States:* the same Common Law in which every man finds the chief guaranty of his rights. If we can understand the 'spirit" of the *Common Law*, we can understand the "*spirit*

of the Constitution," by which we are to interpret and construe its disputed provisions. How much of a "compromise" or "guaranty" of slavery, "the spirit of the Constitution" will sanction, the reader can judge.*

These principles of the Common Law, being connected with the *British* Constitution, as they are with *ours*, abolished slavery in Great Britain, by the decision of Lord Mansfield, in the Somerset case, in 1772. Is the thought to be admitted, for a moment, that the "spirit of the Constitution" of the United States, is *less* friendly to liberty, *less* potent for its protection, *less* hostile to despotism, or *less* efficient for its overthrow—in a word, *less republican*, than the Constitution of a limited monarchy, like Great Britain? Did the American Revolution, and the Declaration of Independence retard, or thrust back, the march of human freedom and human improvement, instead of urging it forward?

The Constitution of the *United States*, both in its letter and its spirit, is moulded and fashioned upon the model of the Common Law, and instinct with its life-inspiring spirit, throughout. Whereas the Constitution of *Great Britain*, that, in the structure of the government, received its distinctive shape and texture before the principles of the Common Law began to be distinctly understood, received afterwards, into its old stock of monarchical and aristocratic ingredients, but comparatively few grains of the democratic principles of the Common Law—yet they proved sufficient to leaven the whole lump with the spirit that abolished negro slavery, first in the Island itself, and afterwards in its dependencies, Asiatic and American. By our dismemberment from Great Britain, are we then to become less free and secure than British subjects? While "slaves can not breathe in England" nor in her colonies, can freemen find no security in America? Have we fallen so low, in the sight of all the nations?

No! Thus it can not be. Thus it shall not be. Thus, *constitutionally*, LEGALLY it IS NOT! Slavery, in these United States, is sheer usurpation, and abuse, from beginning to end; a nuisance, demanding judicial, (not to say legislative,) removal. Every slave held in America, is *unlawfully* held, and in defiance of AMERICAN CONSTITUTIONAL LAW. One single consideration is conclusive of the whole

*We will likewise ask the reader to study carefully these Common Law maxims, to fix them in his memory, and note the page for future reference. We shall have occasion to refer to them again, for *other* purposes than to ascertain the spirit of the Constitution of 1787-9. They have an independent and inherent power, *in themselves*.

matter, and it is simply this:—The Constitution of the United States, yes!—the Constitution of 1787–9, is identical in its spirit with the spirit of the COMMON LAW. It is the legitimate child, it is the well constructed instrument of the Common Law. It is the embodiment of the Common Law, reaffirming its provisions, and constructing and commissioning the Federal Government to carry those provisions into effect. [To say that it is not *this*, is to say that it is a mere confederacy, and no civil government at all.] And the Common Law, whereever recognized, whereever permitted to touch the statute book, to enter the Court of Justice, or to imprint the soil with the sole of her foot, is one uncompromising and universal act of emancipation and abolition. To say that there can be *constitutional* slavery in the United States—slavery tolerated by the Constitution—is the same thing as to say, that there is COMMON LAW slavery, in the United States; an absurdity that, in its own proper form, no sane man, perhaps, has ever yet been found to utter.

Are we traveling beyond the record? Anticipating a decision, beforehand, while our argument is unfinished? Well, then, let us summon further witnesses. If the chimera of constitutional slavery, has as many lives as popular tradition attributes to another "domestic" animal among us, with its stealthy movements and its sharp claws, there are weapons enough, in reserve, to dispatch it.

SECTION III.

"SPIRIT OF THE CONSTITUTION" AS ATTESTED BY HISTORY, AND BY EMINENT CIVILIANS AND JURISTS.

If the shape of the Constitution, its gait, its countenance, its air, its sayings, its alliances, its devisings, and its *doings*, have not sufficiently manifested its "*spirit*" we will now call in the aid of witnesses, who are reputed to have stood nearer to it, and to know more about it, in its earlier days, in its origin, its birth-place, its parentage, its nursing and swaddling, than ourselves.

"The spirit of the Constitution" if sought, out of the instrument itself, and if sought by *historical* testimony, is to be sought in "*the spirit of the age*" and nation, in which the Constitution was born. The question becomes a question of the leading purposes, aims, objects, and principles, that gave birth to the Constitution—that *preceded* it—that demanded it—that brought it into existence.

To know "*the spirit of the Constitution*" then, we must

take a portrait of the "SPIRIT OF SEVENTY-SIX!" If *that* spirit, like the prophet Samuel, is *buried* out of sight of the present generation, and if, "because the Lord has departed from them," and the well recorded *words* of the seer will not suffice them, they must needs demand a vision of the "*spirit*" *itself*—let them strengthen themselves for the sight, lest they "fall straightway all along on the earth, and are sore afraid at its words," when it rises before them, like "gods, ascending out of the earth." It comes! It comes! "An old man covered with a mantle"—its declaration of self-evident truths burning from its lips—its right hand, lifted to heaven, in solemn appeal to "the Supreme Judge of the world, for the rectitude of its intentions"—while "in the *name* and by the *authority* of the good PEOPLE of these colonies"—"with a firm reliance on the protection of Divine Providence"—"for the support of this declaration" and pledging (on behalf of those people) "their lives, their fortunes, and their sacred honor"—it affirms, (as founded on "duty" and on "right,") its act of separation from the people and government of Great Britain; "TO INSTITUTE A NEW GOVERNMENT, laying its foundation on such PRINCIPLES, AND ORGANIZING ITS POWERS in such FORM" as "shall seem most likely" to "secure those rights for which governments are instituted among men"—"holding these truths to be self-evident, that ALL MEN are created EQUAL, that they are endowed by their Creator with certain INALIENABLE RIGHTS, among which are life, LIBERTY, and the pursuit of happiness."

Such is the "*spirit of seventy-six.*" Will it be pretended that *that* "spirit" was dead and buried, without hope of resurrection, in less than thirteen years after its memorable "Declaration?" Will it be pleaded that "the spirit of the Constitution" of 1787–9 is NOT identical with the "spirit of seventy-six"—pursuing, in the Declaration and in the Constitution, one and the same end?

Was the solemn pledge of '76 unredeemed, nay, deliberately *broken* by the Constitution of 1787–9?

Is the "*spirit of the Constitution*" of 1787–9, the deadly antagonism of "*the spirit of seventy-six?*" This it must be, if it either "guaranties" slavery, or holds any manner of "compact" or "compromise" with it? And *then*, it becomes the deadly *enemy* of the nation's freedom, instead of its servant and protector!

We have not room to cite a tythe of the concurrent testimony of that period. We might notice that the "Declara-

tion of self-evident truths" was likewise a declaration of well recognized and oft reiterated truths—that the language of that national document was not only the language of the Common Law, but the language, likewise—almost to plagiarism—of the popular and widely current anti-slavery literature of those times. We might cite the anti-slavery pledge of the Continental Congress of 1774, the solemn denial, by the same Congress, in 1775, that "the Divine Author of our existence intended a part of the human race to *hold an absolute property in*, and *unbounded power over* others." We might cite the testimony of Mr. Jefferson, in his Notes on Virginia, towards the close of the Revolutionary War, that the anti-slavery sentiment was GAINING GROUND "*since the origin* of the present Revolution" and the way preparing "FOR A TOTAL EMANCIPATION." We might recite the *anti-slavery efforts*, (as well as writings,) of Dr. Rush, John Jay, Alexander Hamilton, and Benjamin Franklin, at that period, and so onward, *during the progress* of measures for forming the present Constitution,* and *after its* adoption. This, in connection with the actual abolition of slavery, and the adoption of measures for this end, in a number of the States, and the generally expressed belief that these measures were about to be extended into all the other States. The acts of Congress, already mentioned, just *before*, and confirmed again just *after* the adoption of the Federal Constitution, forever abolishing slavery in the North West Territory, to the end that the Territory might be formed into "republican States and have no slavery." Nor could we well omit the "Observations on the American Revolution," published by Congress in 1779; containing this declaration:—"The great principle (of government) is, and *ever will remain in force*, that ALL MEN ARE BY NATURE FREE, and so long as we have any idea of JUSTICE, we must associate that of *human freedom*. It is *conceded on all hands, that the right to be free* CAN NEVER BE ALIENATED.† We might mention too, the statemennt of Judge Wilson, one of the members of the Convention that framed the Constitution, which he made in the Pennsylvania Convention for its ratification, the same

* Hamilton and Franklin were members of the Convention that framed the Constitution. Rush and Franklin were signers of the Declaration of Independence.

† Here, by the bye, we have another definition of a "republican form of government" which we omitted to quote in its proper connection, in our second chapter. It furnishes also, a definition of that "*justice*" which is promised in the Preamble of the Constitution, and affirms (what we shall have occasion to insist upon by and bye) that the great anti-slavery principle of the Declaration of Independence, is not only "the spirit of the Constitution" of 1787–9, but "WILL EVER REMAIN IN FORCE" whether *with* the concurrence of parchment Constitutions or *without* them.

year, that the Federal Constitution had "*laid the foundation for banishing slavery* FROM THIS COUNTRY:"—and in accordance with this, the anti-slavery petition of Franklin, (another member of the Convention that formed the Constitution,) as President of the Pennsylvania Abolition Society, praying Congress, in 1790, to "secure the blessings of liberty to the People of the UNITED STATES," "*without distinction of* COLOR."* To this we might add the declaration of Washington that slavery ought to be abolished by legislative authority, and that his vote should be given for the measure. We might add the testimony, not only of Madison, Pinckney, and Jay, but also of Patrick Henry, Grayson, Tucker, Wythe, Pendleton, Lee, Blair, Mason, Page, Parker, Randolph, Iredell, Spaight, Ramsay, Martin, McHenry, Chase, Bayard, Rodney, Rawle, Buchanan, Wilkinson, Pleasants, McLean, Anthony, Bloomfield, Galloway, Johnson, Dawes, Scott, Gerry, Rice, Brown, Campbell, &c., &c. A list including the most prominent statesmen of the South as well as the North, proclaiming before the sun, that SLAVERY was a fast waning system, that must speedily fall.

And, what is more significant than any thing else, so overwhelming was this spirit of abolition, during the period from 1774 to 1790, that *the voice of opposition was hushed!* Luther Martin of Maryland, is reported as having made a powerful anti-slavery speech in the Convention that framed the Constitution, but it is *not* on record that a solitary member moved a tongue in reply. So far from there being a pro-slavery excitement at the South, *every* southern member of Congress voted for the abolition of slavery, in the North Western Territory, and the public press in Virginia was loud in its condemnation of slavery.

But we must pause. It would require a much larger book than the one we are now writing, to present any thing like an adequate expression of the ANTI-SLAVERY "SPIRIT OF THE AGE" in which the Federal Constitution was framed and adopted. About ten pages of Weld's "Power of Congress over the District of Columbia"—commencing on page 25, is occupied with a condensed specimen of the language of eminent statesmen of that period, on the subject, which the reader would do well to examine.

* There was no District of Columbia at that time, and no Territory in which slavery had not already been abolished by Congress. Very manifestly, then, Dr. Franklin petitioned for the abolition of slavery in the *States*, and by the *Federal Government* which he had assisted in framing:—a fact that has been alluded to, in recent pro-slavery reports in Congress.

The evidence is overwhelming, that the prevailing "spirit of the age" that produced the Federal Constitution, was an *anti-slavery* spirit, and that this spirit was manifest in the leading minds by which the Constitution was projected, and adopted as well as framed. The pretense of a "compact" —a "compromise"—a "guaranty" in the Constitution, or at the basis of it, *in favor of slavery*, becomes too absurd to be discussed without irony.

Extent of the National Power.

The "spirit of the Constitution," in respect to SLAVERY is sufficiently apparent. "The spirit of the Constitution" in respect to the POWERS essential to be granted, and intended to be conferred, upon the Federal Government, constitutes a distinct branch of inquiry, to which we will now turn.

The *letter* of the constitutional provisions on this subject, we have considered, elsewhere, and have found them amply sufficient to authorize the abolition of slavery. And what reason have we to suppose that the *spirit* of the Constitution, in this respect, is behind the strict *letter* of its provisions? What is there, in the instrument itself, in the structure of the Federal Government it authorizes—what is there in the history of the times, what was there, in the wants or the wishes of the people, that should indicate that the strict *letter* of the Constitution, in this particular, is not in accordance with its *spirit* and *design?*

The whole framework of the Federal Government, as detailed in the provisions of the Constitution, including its restrictions of State power, reveals to us the fact that a *Government*, not a *Confederation*, a *Government* not merely in name but *in fact*, was intended, was authorized and instituted, by the instrument containing the organic law of the Government, and declaring *itself*, to be "the *supreme law* of the land." And there is no such thing as a civil or political government, by the definition of any eminent civilian or jurist, that does not possess the power to establish justice, secure the blessings of liberty, protect individual rights, and "execute judgment between a man and his neighbor." "When the laws have declared and enforced all this"—as Mr. Jefferson hath it—"they have fulfilled their functions." To talk of a civil or political government that does not possess this power, is to talk absurdity, self-contradiction, and nonsense. It is to speak of a thing as existing and not existing at one and the same time.

The old "Articles of Confederation" between the States,

had been entered into, in 1778. This arrangement had been found necessary to clothe in a more formal manner, the "Continental Congress" with THE POWERS the national exigences had been found to need. Until then, the Declaration of Independence, establishing the *principles* and defining the objects of the new government, but entering very little into details, had constituted, along with the Common Law, the only distinctive Constitution of "*the United States*," which that Declaration had affirmed to exist.

And in these Articles of Confederation, a certain amount of "*power and jurisdiction*" (evident attributes of a civil and political government) had been—to use its own words—"*expressly delegated to the United States in Congress assembled.*" The object of these powers was affirmed to be "the more convenient management of the general interests of the United States." In many important particulars, the powers that would have pertained to separate, *disunited* States, (such by the bye, as "the *United States*," described in the Declaration of Independence that gave birth to them, *never were*,) did not, as a matter of stipulated arrangement, pertain to the *States* under the Confederation. Among other things, they could grant no titles of nobility, nor keep vessels of war or other armed force, in time of peace, nor without leave of the United States—neither could they engage in war, unless actually invaded—circumstances sufficiently indicative of their *limited powers*, and of the dependence of the individual State upon the Confederacy. Congress, with the concurrent consent of nine States, &c., &c., were to exercise the "sole and exclusive right of determining on peace and war."—Were to determine controversies between different States, were (exclusively) to receive and send foreign ambassadors, enter into treaties and alliances, manage all affairs with the Indians, fix the standards of coins, weights and measures, establish post-offices, &c., &c.

Nevertheless, after the experience of nine years, it was found that the powers of Congress were not sufficiently extensive to secure to THE PEOPLE the full benefits that a NATIONAL GOVERNMENT ought to confer, and the Preamble to the present Constitution may afford us some hints of those ascertained defects, as may likewise those specific provisions in favor of liberty which have already been discussed; particularly the Amendments. Hence, the new Constitution was formed.

It is known that the delegates to the Federal Convention came together with various and discordant views of the de-

gree of power which the National Government should possess, and that the proper adjustment of power between the State and National Governments, involving the difficult if not impracticable problem of reconciling a National Government with the independency of the States, occupied by far the greater part of the time of the Convention. This problem indeed, along with the connected one, of properly adjusting the relative power of the *larger** and the *smaller* States (NOT the Northern and Southern, the slaveholding or the non-slaveholding)† and allaying the rising jealousies between them, drew out the greater part, of the debates in the Convention. And those delegates who came into the Convention strongly prejudiced and even pledged against the conferring of larger powers upon the National Government, found either their own views modified by the facts and arguments adduced in the debate, or else found themselves in an inconsiderable minority, at the close of the Convention.‡

We may be certain, then, of two things—first, that the words employed in the Constitution were not inadvertently used—second, that the powers conferred were not hastily and inconsiderately bestowed. What those powers are, the Constitution distinctly states.

Nor was the Constitution adopted without a public and wide spread agitation and discussion of this very point. The adoption of the Constitution was opposed on the ground, chiefly, of its too ample bequest of powers to the Federal Government, to the detriment or the danger of "*State Rights.*" Yet notwithstanding all this, and although the vast abilities and almost unbounded influence of Mr. Jefferson and his friends were thrown into the scale of opposition, yet the overwhelming majority in favor of ratification, (including the mass of those statesmen and of the citizens, who afterwards, and on other grounds, rallied round Mr. Jefferson and elevated him to the highest office in the Government,) very soon decided the question, and such a degree of enthusiasm prevailed, that, from that day to this, few statesmen, however fearful of "State Rights" and fearful of

* Massachusetts, Pennsylvania, and Virginia, were then the large States whose power was feared.

† Nearly *all* the States if not all, were then slaveholding States, and not *one* of them expected long to remain so—a fact that may well account for the little attention paid in the Convention, to that subject, and throwing an air of the ridiculous around the grotesque pretension of a "compact"—"compromise"—or "guaranty" on that subject.

‡ For the correctness of these statements, we refer to "Secret Proceedings and Debates of the Convention that assembled in Philadelphia, in the year 1787, for the purpose of forming a Constitution of the United States of America, from the notes of the late Robert Yates, and copied by John Lansing, Jr., members of that Convention." Albany, 1821.

the National Power, have adventured to find fault with the provisions of the *Constitution* in this particular.

And what is still more significant, no class of statesmen, not excepting Mr. Jefferson and his particular friends, have ever found the constitutional powers of the Federal Government too extensive for their convenience, when charged with the administration of the national affairs. In his purchase of Louisiana, Mr. Jefferson admitted distinctly that he exceeded his constitutional powers; at first he suggested an alteration of the Constitution, *extending* its powers for that purpose, but afterwards consoled himself with the thought that the popular assent to that measure made it as valid as a formal change of the Constitution could have done. And in his annihilation of all foreign and even coast-wise commerce, by the long embargo, he gave a much larger construction to the Federal Power over commerce than the total abolition of the domestic slave-trade (even upon Mr. Clay's identification of the slave-trade with slaveholding) would require. Mr. Madison, who once thought the establishment of a National Bank, beyond the constitutional scope of the Federal Power, was afterwards willing to see that power used for that purpose. And all who assent to the constitutionality of protective or prohibitory tariffs, claim a much higher and a much more questionable power for the Federal Government—in the view of any unprejudiced constitutional lawyer—than the power of abolishing slavery in the States—even allowing that the *specific provisions* of the Constitution in that direction, should be left out of the argument.

It remains that we add some citations from *approved constitutional authorities*, attesting the powers which "*the spirit*" and letter of the Constitution confers on the government it authorizes and institutes.

While the question of the adoption of the Federal Constitution was yet pending, and one of the main objections, as already noticed, was the excess of national, in opposition to state power, Alexander Hamilton, (who, along with Madison and Jay, was explaining and defending the Constitution in the papers called "The Federalist,") so far from concealing or explaining away this feature of the proposed Government, avowed and defended it in the bold language that follows:

"But it is said, that the laws of the Union are to be '*the supreme law of the land.*' What inference can be drawn from this—or what would they amount to, if they were *not* supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy. It is a rule, to which those to whom it is prescribed, are bound to observe." *Federalist, No. XXXIII, page* 175.

In the same connection he shows the confusion and anarchy that would ensue if the National Government were *not* to be invested with that supreme and paramount authority over the States which the Constitution describes. And in another article, setting forth the "defects of the present Constitution" (meaning the then existing Articles of Confederation,*) the same writer says,

"The next most palpable defect of the existing Confederation is the total want of a SANCTION to its laws."—*Federalist, No. XXI, page* 110.

In pursuing the subject, the writer among other things, makes the following significant suggestion;

"*Who can predict what effect a* DESPOTISM, *established in Massachusetts would have upon the liberties of New Hampshire or Rhode Island, Connecticut or New York?*"—*Ib. page* 112.

Sure enough! And who could predict the effects of a despotism in Virginia, upon the liberties of Pennsylvania and Ohio? More than Hamilton apprehended, has already been realized. But his suggestion furnishes a pertinent comment upon the constitutional power of Congress—as construed by "the *spirit* of the Constitution"—under the clause that "guaranties to every State in this Union, a republican form of government." Coming as this hint did, from a known abolitionist, how happens it that the South took no alarm, if the South had then expected to perpetuate slavery? Neither this hint, nor his exposition of the supremacy of the Constitution and the laws of Congress appear to have had any other effect than he desired, viz: to make the Constitution popular with THE PEOPLE, and secure its enthusiastic ratification.

Mr. Madison, one of the most prominent members of the Federal Convention, and himself a slaveholder, in a speech in the first Congress under the new Constitution, May 13, 1789, referring to that contemplated abolition by Congress of the African slave-trade, a measure that was then anticipated to be identical, in effect, with the abolition of slavery itself, held the language that follows:

"I should venture to say it is as much for the interests of Georgia and South Carolina, as of any State in the Union. Every addition they receive to their number of slaves tends to *weaken* them and renders them less capable of self defense. In case of hostilities with foreign nations, they will be the means of *inviting* attack instead of repelling invasion. IT IS A NECESSARY DUTY OF THE GENERAL GOVERNMENT to PROTECT *every part of the Empire against* DANGER, as well *external* as internal. EVERY THING, therefore, which TENDS *to increase* this danger, though it *may* be a *local affair*, yet, if it involves NATIONAL EXPENSE OR SAFETY, *it be-*

* It will be noticed here, that Hamilton considers the Articles of Confederation a *Constitution*, but "defective" because not conferring sufficient *powers*.

comes a concern to EVERY PART OF THE UNION, *and is a proper subject for the consideration of those charged with the* GENERAL ADMINISTRATION of the GOVERNMENT."—*Cong. Reg. Vol.* 2. *page* 310—11.

The powers of the Federal Government in general, and in particular reference to *slavery*, according to "*the spirit* of the Constitution" as understood by Mr. Madison, may be gathered from this paragraph with sufficient distinctness. What a comment upon the miserable pretense that the North has no right to interfere—that there was a "compact," a "compromise" an "understanding"—nay, even a "guaranty" (as some have it) by which the Federal Government is precluded from touching the proscribed topic! Yet who can fail to see that Mr. Madison's doctrine is but a fair exposition of the power of Congress to provide for "the general defense?" The "war power of Congress" as insisted on by John Quincy Adams, to abolish slavery in the States, is evidently but an approximation to the higher doctrine of Mr. Madison, as here expressed. And the official statements of the late Secretary of the Navy, Mr. Upshur, which no one pretends to call in question, may suffice to show that the *occasion* for the prompt exercise of this constitutional power to abolish slavery has fully arrived. Even the item of "national EXPENSE" Mr. Madison makes a sufficient cause for such action on the part of the General Government, even without the danger of a partial conquest and consequent dismemberment of "the empire." And according to the best estimates, the "expense" of the necessary means of defense recommended by Mr. Upshur, could not fall short of *two hundred millions of dollars*, to begin with, to say nothing of the standing expense, afterwards, (of, say *twenty millions per* annum,) to maintain such a Navy and keep it in repair. One of these things, then, the National Government must and will, *as a matter of fact*, DO:—either incur this expense, or abandon "the general defense" of the country, or "provide for the common defense" by the only remaining means in its power, the exercise of its constitutional authority for the abolition of slavery in the States.

Among Constitutional Jurists now on the stage, there is no one, perhaps, whose opinion would have more weight with those who would controvert our positions, than that of Judge Story. His participancy in the late decision of the Supreme Court in the case of Prigg versus Pennsylvania, will relieve him from the suspicion of any undue tendency to construe the provisions of the Constitution in favor of ab-

olition. Let us hear his exposition of the powers of the General Government:

"If there be any general principle which is *inherent in the very definition of Government*, and essential to every step of the progress to be made by that of the United States, it is, that every power vested in the Government, is, *in its nature sovereign*, and included by the form of the term, THE RIGHT TO EMPLOY ALL THE MEANS REQUISITE, and forcibly applicable to the attainment of the end of such power, unless they are excepted in the Constitution, or are immoral, or are contrary to the essential objects of political society."*

Assuming then, as Judge Story did, in common with others, that certain powers relative to the return of fugitive slaves, were vested in the General Government, it is easy to see how he drew the conclusion that the State Governments could not, by any legislative provisions, interfere with the exercise of that power. Admitting his premises, the conclusion seems sufficiently logical, so long as we have any remaining conceptions of a *Government of the United States.* Fresh evidence is here furnished, by the bye, that standing on the commonly assumed premises of a constitutional "compact, compromise or guaranty" in favor of slavery, there is no such thing as avoiding conclusions utterly subversive of personal security and general freedom. It is high time, then, to examine the premises themselves, and to know whether we live under a free government or a despotism.

But we have made this citation, in this place, for the purpose of saying that the ample and sovereign powers vested in the Government of the United States—according to Judge Story—powers in the legitimate exercise of which, (according to the late decision of the Supreme Court) the States cannot interfere—are powers abundantly sufficient, *in* such an application, to secure the objects of the Preamble of the Constitution, and its other manifold provisions in favor of "justice,"—"liberty"—"general welfare"—"common defense," "republican form of government," &c. &c., and against "bills of attainder," "laws impairing the obligation of contracts"—"titles of nobility," "*unreasonable seizures,*" and deprivation of "liberty, without due process of law."—*These* are "powers vested in the Government" by the letter and the spirit of the Constitution, while the "powers" to establish slavery, hunt fugitives, kidnap freemen, or authorize others to do so, may be sought after, in the instrument, in vain.

All the powers in the Federal Government, therefore, that

* Quoted by Alvan Stewart, Esq., in his Constitutional Argument in the "Friend of Man" October 18, 1837.

the national abolition of slavery (legislative or judicial) calls for or requires, is precisely the *same* power that Judge Story, (in common with Hamilton, Madison and others) describe as belonging, *of necessity*, to the Government of the United States—powers that Judge Story and the other Judges of the Supreme Court have *actually used in support of slavery.*—So far as the *powers of the Federal Government* are concerned, the *only difference* between the clearly expressed and faithfully administered doctrine of *Judge Story*, and the doctrine contended for, in this chapter, *is this :*—viz. 1. Judge Story (in the case of Prigg vs. Pennsylvania) maintains the supreme authority of National over State legislation, in a case where the "*power vested in the Government,*" viz: to seize or authorize the seizure of persons claimed as fugitive slaves—is a "power" *not* described nor specified in the Constitution—a power not to be made out by "strict construction" and grossly inconsistent with "the spirit" of the Constitution itself. 2. Judge Story wields this power of the Federal Government in favor of SLAVERY and consequently against LIBERTY :—we would wield *the same* federal power in favor of LIBERTY and consequently against SLAVERY.—Which application of that power will the American people prefer?

We have already remarked that those most tender of State rights and jealous of National power have gone quite as far as others in the *use* of the highest and even questionable federal powers. We may now add that the highest stretch of federal power has been made in support of slavery. The purchase of Louisiana and the late decision of the Supreme Court furnish instances in point. To scruple the use of the *same* powers in favor of the legitimate and highest *objects* of power, that are commonly conceded and wielded in *subversion* of those objects, is to bring the Government into ill odor and contempt.

It is quite remarkable that the *exceptions* to the use of supreme national power, laid down by Judge Story, are exceptions that should have prevented him from giving his sanction to the late decision of the Supreme Court. A right, in the Government, to wield power for the enslavement of any human being, is a right that, in the nature of things, can never exist. Such a right the Constitution does not even *pretend* to confer, and consequently the exercise of such an assumed right *is* "excepted in the Constitution," and its exercise is most notoriously and superlatively "immoral," as well as "contrary to the essential objects of political society."

But, on the other hand, the use of the supreme power of government "to establish justice" and "secure the blessings of liberty" is emphatically the use of it for the very "ends of such power" as explicitly specified in the Constitution itself. Of course the Constitution can make no "*exception*" to such use! No "*exception*" can be pointed out,—no shadow of a provision that the ordinary and well known powers of civil government to abolish slavery shall not be exercised by the Government of the United States.* And the highest, dictates of "morality"† are fulfilled by such an use of legislative and judicial power. And *without* such an use, "THE ESSENTIAL OBJECTS OF POLITICAL SOCIETY" *can never be attained*, and the Government fails of fulfilling the appropriate functions of all civil government.

We claim, then, that the "spirit of the Constitution" is the spirit of liberty, the spirit of uncompromising hostility to slavery. And we claim that the "spirit of the Constitution" amply confers on the National Government the power to "establish justice"—to "secure the blessings of liberty"—to "provide for the common defense"—and consequently, to abolish slavery.

SECTION IV.

THE CONSTITUTION CONSTRUED.

"THE SPIRIT OF THE CONSTITUTION," ON THE WOOL-SACK.

To construe the Constitution or any portion or feature of it, is to fix, definitely, upon its true meaning, or some particular portion or feature of it, and decide what application or bearing it has, upon some practical problem, particularly under consideration, at the time; as, for instance, its bearing on slavery and the action of government, either for its support, or its overthrow.

The "spirit of the Constitution" furnishes the rule by which we are to construe its provisions and their application and bearing on slavery and its abolition, in the present discussion.

* Another consideration sufficient to show the absurdity of supposing that by any "compact" or "compromise" the National Government was precluded from abolishing slavery. No one *then* questioned the legitimate power of civil government in general, to abolish slavery, and the exercise of that power to that end was the rising fashion of the day, in this country. Yet in forming a civil government with *supreme powers*, no restriction was even attempted to be made, upon the power of the Government in that direction. Of course, the powers of the Government, in that particular, is the same with that of other governments. *The absence of any such restriction* proves that *no such* "*compact*" or "*compromise*" was made.

† The reader will please to notice this concession of Judge Story (in accordance with the principles of Common Law) that the powers of civil government, though in their "nature sovereign" are restricted and limited by the principles of "morality," and "the essential objects of political society." What becomes then, of the law of 1793 and of the late decision of the Supreme Court?

This "*spirit* of the Constitution" is nothing distinct from its *general and predominant character.*

Every man is known in the community in which he moves, and is designated as having *this* character or *that*, accordingly as such or such traits or qualities are found to *predominate*, in him. He is *characterized* by the qualities that are found to *prevail* in his movements, notwithstanding some particular incidents in his history may not seem well to harmonize or agree with that character. Just so, a Constitution of government has its distinctive, its appropriate, its predominant character, although some incidental provisions may present apparent or even real anomalies, or may be so expressed as to appear ambiguous, or come into dispute and litigation.

If a man should die leaving a last will and testament, and some of its minuter provisions should seem anomalous, obscure, ambiguous, or should come into litigation, the Court would try to ascertain, both by an examination of the instrument itself, and by the well attested character, pursuits, ends, objects, partialities, antipathies, attachments, and consanguinity of the deceased, what the general character, spirit, end, aim, object, and scope, of the instrument was, and then, in the light of that ascertained *spirit* and *character* of the instrument, determine what disposition to make of the controverted point. If for example, the preamble in the principal item in the will should have consisted in the recital of the near affinity, ancient friendship, mutual labors, and invaluable services of one certain *Jonathan Smith*, well known to have been a near relative, a munificent patron, and a faithful partner in the business of the testator, declaring the said testator's intention, in this instrument, to give him his whole real estate—and if, in a subsequent part of the instrument, after a minute description of the testator's home mansion and principal landed property, it should go on to devise and bequeath the whole to a certain person whose name was so clumsily or imperfectly (perhaps fraudulently) written by the draftsman, as to have given rise to the contest whether it were the aforesaid *Jonathan* Smith or one notorious felon *John* Smith, proved in Court to have been a deadly enemy of the testator, who was always conspiring his ruin, who had often attempted to take his life, and whom the testator, at the very time of making his will, was busily intent on bringing to justice—what do you think, candid reader, the Court and jury would do with the very modest claims of this Mr. *John* Smith to the mansion and estate of the

testator?—Settle but that one "delicate question" and you have comprised in a nut-shell the very gist and pith of the grave constitutional question at issue, before this great nation, at this moment.

The general character and spirit of the Constitution with its affinities, its aims, and its plighted promises to LIBERTY have been abundantly proved. They stand out, in bold relief, in the fore front of the document itself, and are corroborated by all the concurrent history of the times in which it was written. Not less well attested and notorious is the hostile character of the felon SLAVERY, that would have strangled "the spirit of the Constitution"—the spirit of seventy-six, in the cradle; and that was doomed to the gibbet with the same breath that directed the draft of the Constitution! Yet now it strides modestly into Court, and claims the document as a deed of "guaranty" in its own favor! It claims, the hearth-stone, the resources, the entire domain of its hated rival, pretending to have derived its title from that rival's own voluntary bequest, as its beloved and favorite heir! And "constitutional lawyers" are found, fee-hungry enough to pronounce the claim valid, or long eared enough to puzzle their spectacles over the "perplexing and difficult question!"

One moment, and a brief space, we must devote to details.

Is it still doubted by any one, whether the clause concerning "persons held to service and labor" may not possibly authorize the seizure and return of fugitive slaves? Do the *words* of the instrument, by any English Dictionary, admit of a *possible* construction to that import? Was the instrument clumsily, or artfully, or ambiguously drafted by the penmen? Is it doubtful whether *Jonathan* Smith or *John* Smith, whether *liberty* or *slavery* should have the benefit of the disputed provision? Let "the spirit"—the *general character* of the Constitution turn the scale.

Suppression of "insurrection"—protection against "domestic violence." What construction shall be put upon these disputed terms in the national "will and testament?" Is it "insurrection" to refuse to labor without wages? "Insurrection" to rebel against *slavery?* Or are the insurgents those who violate that *liberty* which the Constitution ensures? Is it "domestic violence" to run away from women-whippers and babe-stealers? Or even to wrench the manacle and the thumb-screw out of their hands? Or, on the other hand, is "domestic violence" to be defined by the usages of slavery itself—the well-known practices of slaveholders? Who

shall stand for the lawful heir, the presumptive devisee, the legitimate *child* of the "spirit of the Constitution"—the "spirit of seventy-six"—so far as *this* item of bequest is concerned? Shall LIBERTY or shall SLAVERY inherit under the "will?" The litigants are both in Court. The jury will please to look at them, and decide. There stands the "peculiar" claimant with its driver's lash in its hands—its scales, for selling children by the pound, just before him—his blood hounds, for hunting down honest husbands in search of their kidnapped and ravished wives, just behind him. This is *one* of the claimants, under the bequest! The other is plain *Jonathan* himself, with his free labor scythe on his arm, a liberty vote in his pocket, and the cap of liberty on his head. Which most resembles the testator, claimed as a father? Which looks most like "the spirit of the Constitution" and of seventy-six? Gentlemen of the jury! As descendants of the Pilgrim Fathers, what say you? What say you, from Bunker Hill and from Plymouth Rock—from Monmouth and from Saratoga—*which is the lawful heir?* At the ballot box you will render your verdict!

Glance we now at the constitutional provisions claimed for liberty—for the consequent ejectment and banishment, as an usurper, of the SLAVE POWER that has crept into the mansion house of the testator, and driven his children, in coffle gang, on to the plantation, as slaves. There is the item of the "will" that puts the commerce of the Nation, foreign and domestic, into the hands, and under the jurisdiction of *Congress*, the representatives of the People, and of *freemen*. Next comes the item that "guaranties to every State in this Union, a republican form of government." Then come, in succession, the items that inhibit "bills of attainder," "laws impairing the obligation of contracts"—conferring "titles of nobility"—"making war" upon our citizens, or "keeping troops" in time of peace, along with the items that secure a jury trial, and the benefits of the writ of habeas corpus. At last comes the codicil of "amendments" to the "will," securing freedom of speech, of peaceably assembling, and of the press—security against "unreasonable seizures"—deprivation of "liberty without due process of law"—"excessive bail—cruel and unusual punishments" and providing "jury trial" where the value of twenty dollars is at hazard. Taking up these items, either in the gross or in detail—do they amount to a constitutional veto upon slavery, or do they not?—We claim to have proved by the rules, and before the Court of *"strict construction,"* that THEY DO. Is it in the *"spirit* of the

Constitution," and of seventy-six to *reverse* the judgment there obtained? If *not* then that judgment of the lower Court must stand, as the ultimate decision of the law.

But, suppose, for the arguments' sake, that the proof before the Court of strict construction had been less conclusive —that judgment had been suspended—nay, even that it had been rendered by that Court, *against* the claims of freedom, and that, on *her* appeal, instead of that of slavery, the cause were now in litigation here. What says the "spirit of the Constitution" and of seventy-six, to an issue like this?

What *can* it say but, as its noble name and high office dictates, EXALT the living "*spirit*" of the instrument, the "will," the Constitution, above mere dead *letter*, the words, the syllables, the alphabetical characters it employs?

Be it so, that the "*word-catchers who live on syllables*," can read *no* abolition of slavery in the "guaranty of a republican form of government," the exemption from "unreasonable seizures"—the security of liberty except "by due process of law"—nor yet in the prohibition of a caste of nobles—of "bills of attainder"—of "laws impairing the obligation of contracts"—while, at the same time (strange to tell) they can find read "fugitive slaves" in "*persons* held to service and labor," "from whom service and labor may be *due*"—can find "insurrection" in the refusal to work without wages, and "domestic violence" in the attempt to *escape from* domestic violence! Be it so, that, on the argument of dry technicalities we were wholly at fault, and that our opponents held the undisputed field as their own. *What then?* If there be any significancy in an appeal to "the *spirit*" of the Constitution, we may say of such, as the poet *has* said—

> "Commas and points they set exactly right,
> And 'twere a sin to rob them of their mite!"

And common sense may determine whether "*the spirit*" that solicitously guards against minor oppressions in minute details could tolerate the sum and the climax of all oppressions in the gross, and reduced to the most perfect system of which history furnishes any specimen, or of which the human mind can conceive.

What if it *were* so, that the *letter* of the Constitution could not rightfully be claimed as a guaranty of such a specific form of "republican government," as excludes slavery—does not the living "*spirit* of the Constitution" and of this provision afford such a guaranty? To what purpose, or for what object, should the form of a representative government

be preserved, if the PEOPLE, (instead of a select, a favorite caste of them) are not to be represented; nor republican principles honored, nor republican liberty and individual security preserved? Is "the *spirit* of the Constitution" to be satisfied with the mere outward shell, without the vital essence of a republic?

What if it *could* be doubted or denied that the prohibition of "bills of attainder," and of laws "impairing the obligation of contracts," were provisions distinctly and directly prohibitory of slavery—is it not nevertheless manifest that "THE SPIRIT" that must needs guard against *ordinary* bills of attainder and against *such* laws "impairing the obligation of contracts" as are *less* oppressive than the code that vitiates the contracts of the laboring population of one half the States, is a "SPIRIT" that can never consent to the incomparably *more extensive* and *unrelenting* attainder of slavery—the still more unlimited annihilation of contracts wrapped up in the slave code?

What if it *were* so that the prohibition of titles of nobility were not, in due *form*, a prohibition of the slaveholding caste, the *more* than villeinage or serfdom of their vassals:—Who does not see that the "SPIRIT" that prohibits the former, must be still more irreconcilably hostile to the latter?

What if it *were* so that the provisions against "unreasonable seizures" and against the deprivation of "liberty without due process of law," were provisions which, *technically* considered, could not be *directly* claimed for the enslaved;—it would nevertheless be true that the living "*spirit*" and vital essence of such provisions demand and authorize the instant abolition of slavery.

What if it *were* so that the benefits of jury trial, and of the habeas corpus were not particularly secured or provided, for the especial use of the fugitive slave:—can the living "*spirit*" of such provisions be satisfied—*can it be preserved*—in the presence of the Act of Congress of 1793, and the decision of the Supreme Court in the case of Prigg versus Pennsylvania? Let passing history answer.

Most manifestly, if there be any significancy in an appeal to "*the spirit of the Constitution*" for the purpose of *expounding* provisions like these, in the exposition must be in favor of liberty and against slavery.

And just at this point, before passing to another topic, we must pause to extend somewhat, an observation already thrown out in a note, in which it was remarked that the absence of any restriction upon the Federal Government, of

the ordinary, the universal power of all civil governments to abolish the slavery existing within their territorial limits, was proof positive that no such "compromise" or "guaranty" in favor of slavery had been made. We now add that this circumstance furnishes proof that the Federal Government DOES possess power to abolish slavery, and is *bound to* EXERCISE that power.

Admitting, as all candid men must do, in review of the examination that has now been had, that there is nothing in the Federal Constitution establishing our National Government that *restricts* or *prohibits* that Government from the abolition of slavery, it follows—*first*, that the common powers of *all* civil governments to "execute justice between a man and his neighbor," and consequently to abolish slavery, pertain to the Government of the United States; and consequently, *second*, that the same obligations rest on the Federal Government to abolish slavery, that rest on every other government, on earth, in whose territorial limits slavery is practiced.

Those who remind us that the Federal Government is a limited government, and therefore can not abolish slavery, always refer us, of course, to the Federal Constitution, for the limitations of which they speak. But the Federal Constitution contains *no limitations* of the power of the Federal Government in the matter of slavery. That government, therefore, retains all the power over slavery that any *other* civil governments hold, and is charged with all the responsibilities, in respect to it, with which all *other* civil governments are charged. And consequently, even in the *absence* of such specific provisions as those we have considered—(the guaranty of a republican form of government, the exemption from unreasonable seizures, inviolability of liberty except by due process of law, the prohibition to the States of bills of attainder, nullification of contracts, titles of nobility, &c. &c.,) it would still be true that the Federal Government is amply competent to abolish slavery; whether the Constitution be construed by "strict construction" or by "the spirit" of the instrument itself.*

* To this view it may be objected, that by Article 10, of the Amendments, the contrary rule is established, viz: that instead of the General Government holding all the powers not prohibited; it holds none not specifically granted. To this it is sufficient to reply, that "the powers delegated to the United States" by the Constitution, DO include the powers of a "GOVERNMENT," (not a mere confederacy,) "of the United States." [See Art. 1., Sect. 8, Clause 17.] And the "legislative," "judicial," and "executive" powers of that "government" are particularly enumerated, and the laws of the United States are declared to be "*the supreme law of the land.*" These delegations of power comprise a full description of the essential powers of a "*civil government*" and the "*establishment of justice*," is declared to be the *end* of the whole. The *general powers* thus delegated to the United States, (aside from *specific* provisions) are sufficient for the abolition of slavery, unless it can be shown (which it can not) that such a *particular exercise* of power is prohibited in the Constitution.

All this would be true, even upon the supposition that any artificial compacts or written parchments, *could possibly* construct a civil government that should *be* a civil government, and yet *not* be vested with the power of securing inalienable human rights: a proposition we shall not stop to discuss in this place, though it may require attention elsewhere.

SECTION V.

Special Pleadings:—their fallacy.

And what has the claimant of constitutional slavery to say more, in support of the claim? Or what reason can be given, why sentence of death should not be passed upon slavery itself?

Are we to have a repetition of the cant phrases hitherto in use? "The compact," "the guaranty," "the compromises of the Constitution?" Notable words these, once—but what do they avail now? What has become of them?

Does the Constitution of 1787–9 contain the "compact?" If *not*, where shall we look for it? Where is the document, or the record, that we may fasten our eyes upon it? In what law library shall we inquire for it? What is the name of the book and of the publisher that can put us in the possession of it? In what public archives are they deposited, and who are they that have ever gained access to them?

National "compacts," "compromises," and "guaranties" are wont, in this age of printing presses and of official depositories and records, to have some tangible shape and form,—some home and abiding place, where they may be examined and referred to, at pleasure. Not only the learned civilian but the humble citizen is wont to possess copies of them. They are found on the rural mantle-piece, and on the book-shelf of the artisan. They are among the reading books of the school boy, and become familiar as household words. Such are our Declaration of Independence, Articles of Confederation, and Constitution of the United States.

Without a question, the Constitution, the Articles of Confederation, and the Declaration of Independence, are the national "compacts" of these United States. If there are any *others* to be produced, where or what are they, or in whose hands are they to be found?

We are sometimes told that if there had not been some "compromise" made in respect to slavery the southern States would not have come into the Union. It would seem a suf-

ficient answer to say that the southern States *did* come into the Union, and that in the *written compact* the pretended "compromise" is no where to be found. If the southern States were so tenacious and jealous, is it credible that they would consent to leave the "compromise" *out* of the writing? Did they trust to some "implied faith" and "tacit understanding" that was entered into, at the time, without being committed to paper? *By whom* was that "implied faith" pledged? *With whom* was that understanding held? With particular members of that secret Convention in which the Constitution was drafted? Who then were *the parties* to the "compact," to the "implied faith," the "tacit understanding?" "*We, the People of the United States*" knew nothing of the matter, any farther than appeared in the written document itself, that was submitted to the people, for adoption. If the People of the southern States (who, by the bye, could have known no more of these secret understandings than the People of the North did,) adopted the Constitution, trusting in the "implied faith" and "tacit understanding" with individuals of the Convention, then they trusted in those *individuals*, whoever they were, and must look to them, and not to the People of the United States.

It would be just as easy to say (and more easy to prove) that the People of the North would not have come into the Union *with* any known compromise or guaranty of slavery, as it is to say that the People of the South would not have come into the Union *without* it.

If it be said that two or three of the slave States—the Carolinas and Georgia—were backward to come into the Union because Congress was clothed with power to abolish that foreign slave-trade, the abolition of which was then thought to be equivalent to the abolition of slavery—the fact that they nevertheless *did* come into the Union, shows that they did it with their eyes open, and after full time to deliberate and consider. And we might offset these hesitancies of the far South with the fact that Rhode Island accompanied *her* ratification of the Constitution with the proposed Amendment that the slave-trade should be speedily abolished, and that her ratification was expressly made "*in confidence* that the Amendment" would "speedily become a part of the Constitution."

And, so far as the States, or the *People* of the States are concerned, who could have been the parties to the "compact" and "the compromise" about slavery? *All* the States were slaveholding States, then, but *none* of them expected to con-

tinue so. But for the unexpected culture of cotton, and the invention of Whitney's cotton gin, it is commonly thought that slavery would have run out, in the course of that generation, or at any rate, could not have long survived the abolition of the slave-trade.

So far from its being true that the southern States would not have ratified the Constitution if they had thought the Congress would have abolished slavery, they *did* ratify the Constitution believing that the anticipated abolition of the slave-trade by Congress *would be* (as it was *intended* to be) the virtual abolition of slavery throughout the States. This assertion is not destitute of proof.

The Federal Convention was held in 1787, and in the same year, Judge Wilson, one of the members of that Convention, declared in the Pennsylvania Convention for its ratification, that the Constitution *laid a foundation for* "BANISHING SLAVERY OUT OF THE COUNTRY." And he added, "in the lapse of a few years, *and* CONGRESS *will have power to* EXTERMINATE SLAVERY WITHIN OUR BORDERS." By this public declaration, Judge Wilson obtained the assent of the Pennsylvania Quakers to the Constitution. No man contradicted his statements, yet the southern ratifications which came indeed afterwards, and tardily, WERE NOT WITHHELD ON THAT ACCOUNT.

In Virginia the matter was well understood. Gov. Randolph said:—

"They insist that the *abolition of slavery will result from this Constitution.* I hope that there is *no one here,* who will advance an objection *so dishonorable to Virginia.* I hope that at the moment they are securing the rights of their citizens, an objection will not be started, that *those unfortunate men now held in bondage,* BY THE OPERATION OF THE GENERAL GOVERNMENT, may be made FREE."

This was said in the Virginia Convention for adopting the Federal Constitution. Whether there *were* any in that Convention, who *dishonored Virginia* by objecting to the acknowledged power of the Federal Government over slavery, we are not informed. *If there were,* their views did not prevail. The Constitution was adopted. Similar statements are said to have been made in the Conventions of other States.

And what if it *were* so, that in the secret Convention that drafted the Constitution, there were men who wished to shape the instrument in such an ambiguous manner as to favor slavery, without saying so, in direct and honest terms? And what if it could be *proved* that this were so, and that they succeeded in their designs, so far as the drafting of the instrument is concerned? Would the "PEOPLE OF

THE UNITED STATES," who knew nothing of the fraudulent procedure, be bound by the *wicked intentions* of the framers, or of a portion of them, instead of the natural import of the *language* they employed? Would "*strict construction*" say so? Or is the "*spirit of the Constitution*" to be accounted identical with the dishonest spirit of such men, who, after all, did not dare *to express*, in the document, their nefarious *designs?* Are we to be bound by their secret and *unrighteous purposes*, rather than by the *righteous words they were obliged to employ*, in order to make their document acceptable to the People?*

We do not say nor even intimate that such were the facts; but we do say that *if* the oft repeated story of an "*understanding*" in favor of slavery, among the members of the Federal Convention, be founded in truth; and if, as is farther alleged, the disputed provision of the Constitution concerning "*persons held to service and labor*," was the result of that secret "*understanding*," and if the very remarkable phraseology there employed, (carefully excluding the *word* slave, and by no means describing the *condition* of a slave,) was *intended* nevertheless, by the writers, to apply to fugitive slaves, then the annals of political chicanery furnish nothing more reprehensible and deserving the indignation of mankind. Let those see to it, who would make such representations of the facts. If there are any who impeach the characters of the framers of the Constitution, before the world, they are the persons.

For, according to their statements, what were the facts? And what was their conduct?

With the policy of holding the Convention in secret, we have nothing to say. We only allude to the fact that it *was* so held. The history of the "Secret Proceedings and Debates of the Federal Convention," furnished us by two of the members, Messrs. Yates and Lansing, of the State of New York, tells us the story, as does likewise the communication of Luther Martin, of Maryland, (another member,) to the Legislature of his own State, which appears in the same volume. "*The doors*," says Mr. Martin, "*were to be shut, and the whole proceedings were to be kept secret*, and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States, upon the subjects under our discussion."

This was in 1787. The Constitution was adopted by the

* See Address to the Liberty Party in the United States, by ALVAN STEWART, Esq. Chairman of the National Liberty Committee.—*Liberty Press, June* 4, 1844.

States during that year and the year following, and went into operation in 1789. Not until *thirty-two years afterwards*—not until the year 1821, do Messrs. Yates and Lansing lift the veil of secresy from the "proceedings and debates of the Convention," revealing, by the bye, in addition to the strong and apparently unanswered anti-slavery speech of Luther Martin of Maryland, very little that throws light on the views held in the Convention on *that subject*. Many years afterwards come the celebrated posthumous papers of Mr. Madison, said by those who have waded through them, to contain very little if any satisfactory information on that subject. And are we now to be told, that the "*spirit of the Constitution*" is to be ascertained only by the *secret*, and for the most part, yet *unrevealed* sayings and doings of the Convention of 1787—that the Constitution must be construed to mean what Messrs. So-and-So are rumored to have said in that secret Convention—that the "compromises" and "guaranties" of the "compact" are to be looked after, in the secret and unknown doings of that Convention—NOT in the document they elaborated, nor yet in the ACTS and INTENTIONS of the People who took the instrument at its word, and adopted it, for what its words made it?

The framers of the Constitution either *intended* a "compromise" or "guaranty" in favor of slavery, or they did not—they either intended to secure the return of fugitive slaves, or they did not?

If they *did*, then they deliberately intended and artfully labored to DO THE THING without TELLING THE PEOPLE that they had done it—without *revealing the fact*, by the *words* they employed! The words *slave* and *slavery* were, in that case, carefully avoided, and the description could not have been commonly understood as applicable to the slave. *It was not, in fact*, applicable to the slave—and even allowing the fraud were *intended*, the extreme care to avoid the *detection* of the intention prevented the thing intended from being done! But suppose they *had* succeeded in a covert yet correct description of the condition of the slave—would the PEOPLE be bound by intention of the persons they employed to draft the instrument, or by THEIR OWN?

To put the strongest possible case, and give the slave power the benefit of the worst possible supposition that can be made, we will suppose that *the people themselves*, or a majority of them, in looking upon, and adopting the Constitution as a whole, deliberately *intended* the absurdity and

impossibility of securing their *own* liberties and yet putting their heels on the necks of their enslaved brothers!. A more diabolical act could not well be described, to be sure, but suppose it were even so, *what then?* It still remains true that they *intended* to secure *their own* liberties, and that in order to do so, they intended to put such words and phrases into the instrument as would answer *that purpose.* It seems too, from an examination of the instrument that they had some correct notion of the proper language to be used. Well: they made use of that language—but with a latent "*understanding*" that the benefits of it should apply only to the "free white" inhabitants, and not to the enslaved! But *that* distinction they were either afraid or *ashamed* to write down. The consequence is, the document itself *does* secure the rights of the *whole population*, whenever it is properly applied. The question arises whether the "*spirit*" (along with the letter) of the document is *the same* as the "spirit" of those who adopted it? And whether the *present* generation *may* not and *should* not use the document according to *itself*, and not according to *them?* Had they used the Bible itself (as they might effectually have used much of it) for the same purpose—would the "spirit" of the *Bible* and *their* spirit be one and the *same thing?*

Suppose six brothers should have an "*understanding*" with each other, and in writing an instrument for the government of the whole family of twelve brothers, should write it so that the instrument would appear very fair in the eyes of all who should look upon it, and that by a fair construction, it would secure the equal rights of the whole. Yet, by *their* "*understanding*" of the matter, some circumlocutions and ambiguities introduced for that object, into the paper, are *intended* to be used to deprive the other six of their rights. The question is whether an honest judge and jury may not use *the document itself*, fairly construed to secure the *whole family their rights*, or whether they must needs be governed, in their decision, by the fraudulent intentions of the *six*, and so help carry them out, in their verdict and judgment!

'Twere needless to trace out, and expose, in detail, all the puerilities that have been uttered against the abolition of slavery, by Congress, in the District of Columbia. The only pertinent question is, by what right, authority or warrant, *Congress has enacted* slavery, there.

What absurdity can exceed that of saying that the wishes or the laws of Virginia and Maryland must govern the legislation of Congress for the District? That there was an

"implied faith" to that effect in the cession of the ten miles square! The acts of cession tell their own story. And so does the clause of the Constitution authorizing the acceptance by Congress. With any such reservation, Congress had no constitutional authority to accept it, nor could its possession have answered the well known objects of the Constitution in providing for such a District. It had been found that Congress could not act independently while setting in a location controlled by State policy, and State authority. Virginia and Maryland knew all this, and they understood and ratified the Constitution, before the cession was made. And to say that Congress must not abolish slavery in the District, without a vote from the inhabitants, is to establish a principle which would *wholly abrogate* the legislative authority of Congress over the District, and leave it in a State of anarchy, without any civil government, at all! The power of Congress to abolish slavery in the District, has never, until within a few years, been denied, and has been conceded by the most eminent statesmen of the South—by those now loudest against the exercise of the power.

CHAPTER IV.

OF THE LEGALITY OF SLAVERY, BY THE CONSTITUTIONS OF THE SLAVE STATES.

State of the Question—Abolition of Slavery in Massachusetts—Slavery Unconstitutional in Delaware—Is Slavery Constitutional in Maryland?—Other States—North Carolina, South Carolina, Louisiana, Kentucky, Tennessee, Mississippi—Conclusion.

If slavery be inconsistent with the Constitution of the United States, it is natural to inquire whether it be consistent with the Constitutions of the States wherein it exists.

And this question resolves itself into another, namely, whether the spirit and letter of those Constitutions, agree, in the main, with the Constitution of the United States, or in other words, whether they embody "a republican form of government" which "the United States" have guarantied "to every State in this Union"—whether, like the States formed out of the North Western Territory, they are "republican States" and can "have no slavery?"

To answer this question in the affirmative, is to say that slavery in the States is illegal, because contrary to the State Constitutions. To answer it in the negative, is to say,

that Congress is bound to interfere, under the fourth section of the fourth article of the Federal Constitution, and provide for them republican forms or constitutions of government.

Abolition of Slavery in Massachusetts.

In one of the States where slaves were formerly held, a judicial decision, without any statute enacted by the legislature, declared that slavery was illegal.

"In Massachusetts, it was judicially declared, soon after the Revolution, that slavery was virtually abolished, by the Constitution, and that the issue of a female slave, though born *prior* to the Constitution, was born free."—*Kent's Commentary, page* 252.

In giving the opinion of the Court in the case of the Commonwealth versus Thomas Aves, in 1833, Chief Justice Shaw, said:—

"How, or by what act, particularly, slavery was abolished in Massachusetts, whether by the adoption of the opinion in Somerset's case, as a declaration and modification of the Common Law, or by the *Declaration of Independence*, or by the *Constitution of* 1780,* it is not now very easy to determine, and it is rather a matter of curiosity than utility, it being agreed on all hands, that if not abolished before, it was so, by the declaration of rights. * * * *

"Without pursuing this inquiry farther, it is sufficient for the purposes of the case before us, that by the Constitution adopted in 1780, slavery was abolished in Massachusetts, upon the ground that it is contrary to natural right and the plain principles of justice. The terms of the first article of the declaration of rights, are plain and explicit. 'All men are born free and equal, and have certain natural, essential, and unalienable rights, which are the right of enjoying and defending their lives and liberties, that of acquiring, possessing, and protecting property.' It would be difficult to select words more precisely adapted to the abolition of slavery."—*Pickering's Reports, page* 209–10.

Slavery Unconstitutional in Delaware.

Is Massachusetts the only State in the Union that has a "bill of rights," and a "Constitution" that recognizes the great central truth of republicanism that "all men are born free and equal?"

What say "our brethren of the South?" Do they come in for no share of the great national birthright of freedom? Let us take a peep into their Constitutions, and see.

The Preamble of the Constitution of Delaware, we have quoted, in another connection. Very manifestly there can be no constitutional slavery in Delaware, and nothing is wanting but a judicial decision, like that of Massachusetts, to abolish slavery in that State. "*All men*" are declared by the organic law of Delaware, to have, by nature, the rights

* That is, the Constitution of the State.

of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and *liberty*, of acquiring and protecting reputation and *property*." No statute could be enacted more authoritative or explicit than this. The Constitution of Delaware provides for freedom of speech and of the press, and religious freedom. It says :—

"The PEOPLE shall be secure in their PERSONS, houses, papers, and possessions, from unreasonable searches and SEIZURES.

"No attainder shall work *corruption of blood*, nor, except during the life of the offender, forfeiture of *estate*."

In the entire document we meet with no discrimination on account of color, and no mention of slavery or slaves.

If slavery be not illegal in Delaware where is it illegal? This Constitution was adopted in 1792, and (we believe) *after* the judicial abolition of slavery in Massachusetts, so that the legal effect of such Constitutions could not have been unknown or forgotten.

Is Slavery Constitutional in Maryland?

"We, the delegates of Maryland," &c., &c., declare, "That *all government* of right originates from THE PEOPLE, is founded in compact only, and *instituted solely for the* GOOD OF THE WHOLE."

"That the INHABITANTS of Maryland, are entitled to the COMMON LAW OF ENGLAND."

['Entitled to emancipation from slavery' could scarcely have been more explicit!]

And again the phrase "*the inhabitants* of Maryland" is repeated. Further, it is declared—

"That the right, in the PEOPLE, to participate in the legislature, is the best *security of liberty* and the FOUNDATION OF ALL FREE GOVERNMENT."*

"That EVERY MAN has a right to petition the legislature, for the redress of grievances, in a peaceable and orderly manner."

"That paupers ought not to be assessed for the support of government, but *every other person* in the State ought to contribute his proportion of public taxes," &c.

"That *monopolies* are odious, contrary to the *spirit of a free government, and ought not to be suffered*."

"That no title of nobility, or HEREDITARY HONORS ought to be granted in this State."

[No exception is here made for the "hereditary honors" of white persons or of slaveholders.]

The above are found in the Declaration of Rights, in the Constitution which was framed in August, 1776.

Other States.

North Carolina.—"*Declaration of Rights*."—"That all political power is *vested in*, and *derived from* the PEOPLE ONLY." "That *no* man, or

* Another definition of "a republican form of government."

set of men are entitled to exclusive or separate emoluments or *privileges* from the community, but in consideration of public services." "That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained." "That ALL MEN have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences."* "That a frequent recurrence to *fundamental principles* is absolutely necessary to preserve the BLESSINGS OF LIBERTY." "That *perpetuities* and *monopolies* are contrary to the genius of a FREE State,† and OUGHT NOT TO BE ALLOWED."

In the Constitution of North Carolina, (as in those of Delaware and Maryland,) we find no establishment of slavery, and no authority vested in the legislature to establish it. On the contrary, the Constitution (Article 44) explicitly says—

"That the *Declaration of Rights* is hereby declared to be *a part of the Constitution* of this State, and ought never to be violated *on any pretense whatever*."

How then, can there be any *constitutional validity* in the remarkably rigid slave statutes of North Carolina, by which the rights of conscience are violated, "fundamental principles" outraged, and monopolies established?

SOUTH CAROLINA.—Even in this State, the Constitution provides for "the free exercise and enjoyment of religious profession and worship," and "trial by jury." "The liberty of the press, shall be forever inviolably preserved." Other parts of the document, however, are in bad keeping with these provisions, which, if carried out, would not fail to abolish slavery. Which part of the Constitution is to be considered indicative of its "spirit," and which must be set aside as anomalous, we will not now stop to inquire.

LOUISIANA.—The Preamble to the Constitution declares that—"We, the representatives of the PEOPLE," &c., "in order to secure TO ALL the citizens thereof, the enjoyment of all the rights of life, LIBERTY, and property, do ordain and establish the following Constitution or form of government, and do mutually agree with each other, to *form ourselves* into a *free*‡ AND independent State," &c., &c. The Constitution says—

"Printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of the government, and no law shall ever be made to restrain the right thereof. *The free communication of* THOUGHTS *and* OPINIONS *is one* of the INVIOLABLE RIGHTS

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*And yet, in North Carolina, the laws forbid the slaves to be taught to read the Bible, or to be in possession of one! "In North Carolina the law prohibits a free colored man, whatever may be his attainments or ecclesiastical authority, to preach the Gospel."—*Jay's Inquiry, page* 23.

†Implying that North Carolina was to BE a "*free* State."

‡But *is* Louisiana a *free State*?

OF MAN, and *every* citizen may *freely speak, write, and print*, on ANY SUBJECT, being responsible for the abuse of that liberty."—*Article* 21.

"All *laws contrary* to this Constitution shall be NULL AND VOID."—*Article* 25.

The gentlemen of the legal profession will have little difficulty in determining whether the following statute of Louisiana, a part of its slave code, is constitutionally "null and void."

"If any person shall use any language from the *bar, bench, stage, pulpit* or any *other* place, or hold any *conversation* having a TENDENCY to promote discontent among free colored people, or insubordination among slaves, he may be imprisoned at hard labor, not less than three nor more than twenty-one years, or he may suffer DEATH *at the discretion of the Court.*"

KENTUCKY.—"We, the representatives of the PEOPLE of the State of Kentucky, in Convention assembled, to secure to *all* the citizens thereof the enjoyment of the right to life, LIBERTY, and property, and of pursuing happiness, do ordain this Constitution for its government."

Among other things, the Constitution declares—

"That all power is inherent in *the people*, and all *free* governments are founded on *their authority*, and instituted for their peace, safety and happiness."

"That *all men* have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences."

Freedom of speech and of the press are then secured in the same language as in the Constitution of Louisiana.

Strange to tell, the same document contains a provision that the legislature shall have "no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated!"

It might well be questioned whether the *legislature* could *enact* or whether the *Judiciary* or *Executive* could *enforce or execute* slave laws without a violation of the *fundamental principles* of the Constitution of Kentucky! When a document stultifies itself in this manner, it would puzzle "strict construction" to make any thing but contradiction and self subversion out of it. And "the spirit" of such a Constitution might be difficult to be ascertained. We will only say that if the *free* features of this Constitution are to stand, as valid, the *pro-slavery* features are to be set aside as incongruous and impracticable. But if these *latter* are to be held valid, then the *former* must be nugatory, and the Kentuckians are wholly without the benefits of their declarations and provisions, in favor of liberty.

TENNESSEE.—*Declaration of Rights.*—"That all power is inherent in the PEOPLE, and all FREE governments are founded on their authority and instituted for their peace, safety, and happiness; for the advancement of *those*

ends, they have, AT ALL TIMES an inalienable and indefeasible RIGHT to alter, reform, or ABOLISH the government, in *such* MANNER, as they *may think proper*."

The "inalienable and indefeasible RIGHT" of "the people" of Kentucky —(nearly one third of whom are slaves and free "people" of color—and a small minority of whom are slaveholders)—to ABOLISH the government they live under, "in such MANNER as they may think proper" is pretty strongly stated in this article—and with less of the peace principle in it, than the "incendiary abolitionists" would have been likely to have introduced!— Furthermore it is declared:—

"That *all men* have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience."—"That theP EOPLE shall be secure in their *persons*, houses, papers, and possessions, from unreasonable searches and *seizures*;"—"that no conviction shall work *corruption of blood*, or forfeiture of estate;"—"that the printing presses shall be free" &c. (as in the other Constitutions)—"that *perpetuities* and *monopolies* are contrary to the genius of a free State, and *ought not to be allowed*."

[That is, no "compromise" ought to be made with them!]

The lawyer would have a hard task that should undertake to prove, before a Court of sound and upright constitutional jurists, the constitutionality of slavery in Tennessee, notwithstanding the aristocratic structure of the State government, operating to strengthen the slave power.

MISSISSIPPI.—"We the Representatives of THE PEOPLE inhabiting the western part of the Mississippi territory," &c. &c., "in order to secure to the *citizens thereof* the rights of life, liberty, and property, do ordain and establish the following Constitution and form of government, and do mutually agree with each other to form ourselves into a FREE and independent State."

"That the general, great, and essential principles of *liberty*" [not slavery] "and *free* government may be recognized and established, we declare," &c.

The "declaration of rights" then proceeds to affirm—"that all political power is inherent in the PEOPLE," &c., (repeating the declaration of Tennessee with its right to "*abolish*," &c.) also that "every citizen may freely speak, write and publish his sentiments on all subjects," &c.—that "no law shall ever be passed to curtail or restrain the liberty of speech or of the press"—"that the *people* shall be secure in their *persons*, &c. from unreasonable *seizures*" that "the right of trial by jury shall remain inviolate"—that "*every* citizen has a right to bear arms for the defense of *himself* and the State," &c. &c.

To give these "great and essential principles of liberty," all the force of organic law, paramount to statute law, it is carefully added, by way of "conclusion" to this Declaration—

"To guard against transgression of the high powers herein delegated, we declare that every thing in this article is *excepted out of* the general powers of government, and shall *forever remain inviolate*; and that *all laws contrary thereto*, or to the following provisions, *shall be void*.

But the Constitution itself in utter forgetfulness of these "*essential principles*" provides, that "the general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, *unless where a slave shall have rendered the State some essential service*, in which case the owner shall be paid a full equivalent for the slaves so emancipated."*

A number of curious questions might be started, here. Does not the declaration of rights render null and "void" the above provision of the Constitution? Or must the *latter* stand, and make "void" the *former?* *Both* can not be valid, of course, or if they are, the Constitution itself is "null" by equi-poise.

Suppose a judicial decision, under "the great and essential principles of liberty" which "shall forever remain inviolate" and of which it is declared in the bill of rights that "all laws contrary thereto" (not excepting the slave laws) "*are void*"—should declare the slaves in Mississippi emancipated—the question arises whether the prohibition to the "*general assembly*" forbidding *them* to emancipate the slaves, would apply to the *Judicial Court?*

What endless illustrations have we, of the utter incompatibility of SLAVERY with FREE INSTITUTIONS! To suppose them both to exist, legally, at the same time—what can exceed the absurdity? And how manifest that a slave State can not enjoy a republican government!

CONCLUSION.

These specimens must suffice. In a former chapter we cited some of the pro-slavery and other associated aristocratic features of the Constitutions of the slave States, in proof that they did not exemplify republicanism, nor harmonize with "a republican form of government." With all due impartiality we have presented the brighter features of some of those Constitutions, now.

Some of those Constitutions, (that of Delaware, at least, if not some others,) may fairly be claimed, we think, as subversive of *slavery*, though containing features, even then, so aristocratic and anti-republican, as to warrant the interference of Congress, under the national "guaranty" of "a republican form of government to every State in this Union." And a correction of those abuses and oligarchies, in the slave States, would carry with it the abolition of slavery.

In some of the slave States, then, slavery is illegal, because

* QUERY. Do the Mississippians consider their "slaves *better off*" in slavery than if *emancipated?*

contrary to the Constitutions of the States where it exists. In others of them, the Constitutions are so palpably anti-republican as to call loudly for the constitutional guaranty of the United States. If in others of them, the Constitutions are difficult of exposition, Congress has a right to demand distinctness and decision.* In the cases where the Constitution is for liberty and the statute for slavery, the Congress has a right to demand that they shall harmonize. The "spirit of the Constitution" was not in quest of shells, of shadows, or shams, when it demanded for every State in this Union a republican form of government—nor will a *free people*, deserving the appellation, be satisfied with the mere *name*, instead of the *thing* signified by it. A government *may* be anti-slavery without being republican. But it *can not* be republican without being anti-slavery.

CHAPTER V.

THE DECLARATION OF INDEPENDENCE.

The charter of liberty, but never claimed as a "guaranty of slavery"—The Declaration, a part of American Constitutional Law—Proofs of this position—A Constitution of government defined—The Constitution of 1776, still unrepealed—Historical facts—The alternative—The Declaration of Independence, if the act of separate States, equally fatal to legal slavery—The Declaration, never repudiated by the slave States, is still binding upon them.

In disposing of the claims of SLAVERY, under the Constitution of 1787-9—we have disposed of *all its pretensions* to a "compact," "compromise" or "guaranty," on the part of the General Government, or of the people of the United States. Back of that date, and beyond the framing of that instrument, it never adventures to travel. It never alludes to the "compact" made in the "Articles of Confederation" in 1778, nor to the earlier "compact" of the Declaration of Independence in 1776. It has an instinctive dread of *those* "compacts."

Not so with the claims of LIBERTY and EMANCIPATION. They are of older date, and gain in freshness and vigor the farther they are traced.

* In the correspondence of the Oberlin Anti-Slavery Committee with Hon. Wm. Andrews, (vide Friend of Man, July 31, 1839,) we meet with the following paragraph: "Of all the Constitutions ever formed by the people of the Union and of the States, *not one fails to recognize the paramount authority and supremacy of God.* To quote the words of every Constitution, would be laborious to us and tiresome to our readers, but for the benefit of those who wish to examine the matter, we refer to some of the articles where this recognition can be found. See Hogan and Thompson's Edition of the American Constitutions, pages 3, 5, 6, 13, 21, 25, 27, 48, 49, 68, 75, 95, 118, 126, 154, 159, 182, 203, 220, 227, 262, 273, 289, 294, 318, 327, 355, 362.

The Declaration, a part of Constitutional Law.

When we closed our direct examination of the Federal Constitution of 1787–9, and of the Constitutions of the several States, we did not close our examination of American Constitutional Law.* This statement will doubtless surprise some, whose idea of a Constitution of civil government never goes beyond the piece of paper or parchment they have been accustomed to hear called by that technical name. The thought never entered their minds that the American people could have had a Constitution of Government, before the sittings of the Convention of 1787. Still less have they ever suspected that any thing *besides* the document then framed can be properly considered as forming a part of our Constitutional Law, at the present time, or that any remains of *such law* could survive the wreck of *that paper*, if all the authenticated *copies* of it should be lost or burned, or if, by any foreign invasion or domestic disorder, or dismemberment, the present arrangements under it should be thrown off of their present track.

Definition of a Constitution.

"*Constitutional Law*" has been defined to be "the *fundamental principles* of a government, showing the true intent, meaning, and end of its formation. And the effect of these declared principles will be to limit all authority under the government *to their own spirit*, and make whatever is done contrary to them unconstitutional and void."† In strict accordance with this, is the definition of our approved lexicons. A "*Constitution*" according to Webster is "the established form of government in a State, kingdom, or country; a system of *fundamental rules*, *principles*, and ordinances, for the government of a State or nation."

The Constitution of 1776, still Unrepealed.

Were the United States without any thing of this kind until 1787–9? And is there no manner of connection between the present Federal Constitution and the Constitutional Law that preceded it?

We have had a *National Government* ever since the 4th of July, 1776, a National Government that had its "Continental

* A law volume before us bears the following title page. "Constitutional Law, *comprising the* Declaration of Independence, the Articles of Confederation, the Constitution of the United States, and the Constitutions of the several States composing the Union." Washington, Gales and Seaton, 1820.

† "*Seventy-six*"—a writer in the Emancipator of Jan. 4, 1838.

Congress"—its "Continental army"—its "Continental money" too, as some may remember. This National Government carried on a National war, appointed National officers to transact public affairs—entered into foreign negotiations—procured recognitions from foreign courts of its legitimate authority, and of the independence of the Nation it governed—made treaties, concluded a peace.

And was this National *Government* without any "*fundamental rules, and principles*"* all this time? Was it even without a *written*, a documentary, an authenticated, a National *expression* of those "fundamental rules and principles?" What was the "Declaration of Independence" with its self-evident truths, and its declared object of *instituting a new government, founded on* those principles, but such an expression? And what was that expression but the promulgation of a Constitution? The *minute details* of the government, to be sure, were not then fixed upon. That was left for the "Articles of Confederation," two years afterwards, and these were altered into the Federal Constitution about ten years after that time, other "Amendments" have been since added, and other changes may hereafter take place.

In all this, has the "Declaration of Independence" been *repealed? If it has*, then "the thirteen United States of America" have ceased to be such, and have sunk back into British colonies again. *If it has not*, then its essential and distinctive character, as the *fundamental basis and ground work of* AMERICAN CONSTITUTIONAL LAW, remains unchanged, and in full force.

We are the same "United States of America" that we declared ourselves "*of right*" to be, in July, 1776. We claimed *the right*, on the ground of the self-evident truths we then recognized as the basis of the new government. If we have renounced those self-evident truths, or have ceased to place them at the basis of our National Government, then we have renounced the right to have any National Government at all.

HISTORICAL FACTS.

A vague notion prevails that, in the first place, there were thirteen separate, disunited States, wholly independent of each other, and that this condition of things continued until the adoption of the Federal Constitution of 1787–9, when, for the first time, they became "*United* States," and under

* A Constitution may either be written or unwritten, or (like the British Constitution) partly written and partly unwritten. Common Law is the soul of the British Constitution. "Unwritten or Common Law—a rule of action which derives its authority from long usage, or established custom."—*Webster.*

the authority of a General Government. But this theory is at war with incontrovertible historical facts, and stubborn chronological dates. Before the Declaration of Independence, July 4, 1776, there *were no independent sovereign States;* and the Declaration which asserted their independence, asserted likewise their union, as "United States of America," affirming, moreover the *object* of their assumed independence to be *the institution of a new government* (not governments) upon the basis of the self-evident principles then recognized.* There has been no *State sovereignty* that has not been connexed with the *unity* of the States, and *modified by it.* The "Articles of Confederation," that were several years under discussion before their adoption, were shaped nearer in accordance with the notion of separate State sovereignty than either the Declaration of Independence or the Federal Constitution, yet even this document, described, to some extent, a General Government, but being found defective, in this very particular, the Convention of 1787 was called, and the theory of the Declaration of Independence was, in the new Constitution, more completely restored.

For a more minute statement of these facts, the reader is referred to an oration delivered at Newburyport, by John Quincy Adams, July 4, 1837. A few extracts from that oration will not only confirm what we have said, but help to indicate the important ends which those facts should be made to subserve.

"They had been British colonies—distinct and subordinate portions of one great community. In the struggle against one common oppressor, by a moral centripetal impulse, they had spontaneously coalesced into ONE PEOPLE. They declare themselves such, in express terms, by this paper. The members of the Congress who signed their names to the Declaration, style themselves the Representatives, not of the separate colonies, but of the United States of America, in Congress assembled. No one colony is named in the Declaration, nor is there any thing on its face, indicating from which of the colonies, any one of the signers were delegated. They proclaim the separation of *one* people from another. They affirm the right of the PEOPLE to institute, alter, and abolish their government; and their final language is—'We do, in the name, and by the authority of *the good People* of these colonies, solemnly publish and declare that these *United* Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES.' The Declaration was *not*, that each of the States was separately free and independent, but that such was their *united* condition. And so essential was their Union, both in principle and in fact, to their freedom and independence that, had one of

* None of the *separate States* had declared independence before this *national* declaration. The Constitutions of all the States are of later date, except that of New-Jersey, which bears date July 2, 1776, but in this document no mention is made of independent State sovereignty. On the other hand, the term *colony* was used, both in the Constitution and in commissions, writs, &c., until Sept. 1777, when an act of legislature directed the word *State* to be substituted for *colony*.

the colonies seceded from the rest, and undertaken to declare herself free and independent, she could have maintained neither her independence nor her freedom.

"And, this ONE PEOPLE did notify the world of mankind that they *thereby* did assume, 'AMONG THE POWERS OF THE EARTH' the separate and equal station to which the laws of nature and of nature's God entitled them."—*Pages* 11, 12.

"The idea of separate State sovereignty had evidently no part in the composition of this paper."—*Ib. page* 33.

And "the idea" of a "compact," "compromise," and "guaranty," in support of interminable despotism, for the purpose of *bringing into the Union* the States that *were* already in the Union, and *had been* in it for about a dozen years, when the Constitution of 1787–9 came into being, is "an idea which evidently formed no part in the composition of *(that)* paper."

We have heard Mr. Adams' testimony that the Declaration of Independence established a *National Government* for "the United States of America." Let us now hear his testimony concerning the *character* of the government *then and thus* established.

"*The elements and principles for the formation of a new government, were all contained in the Declaration of Independence*, but the adjustment of them to the condition of the parties to the compact, was a work of time, of reflection, of experience, of calm deliberation, or moral and intellectual exertion," &c.—*Page* 28.

In other words, the Declaration of Independence comprises and embodies the fundamental "elements and principles" of AMERICAN CONSTITUTIONAL LAW. The adoption of the "Articles of Confederation," first, and of the "Constitution" of 1787–9, afterwards, are to be regarded in the light of "exertions" for the "adjustment" and proper application of these great principles of Constitutional Law. These *principles*, asserted in the original Declaration of 1776, when the nation came into existence, continue to constitute now, (as they always have done, and will continue to do) the vital essence, the pith, the marrow, and the substance, of our Constitutional Law. The mere outward form, the minutely detailed *provisions* of the subsequently written Constitution—these are but the *instruments*, of which those principles are the living spirit and substance. To accept of the former as a substitute for the latter, and to their exclusion would be to accept of the shell, and throw the kernel away—to idolize the instrument and spurn the bleasings it was intended to procure for us. Let us hear from Mr. Adams again.

"The Declaration of Independence first organized the social compact on the foundation of the Redeemer's mission on earth. *It laid the corner stone of human government on the first principles of Christianity.*"—*Page* 6.

How could it do this, if its authority were not to be recognized, as comprising fundamental Constitutional Law? Speaking still of the Declaration, Mr. Adams says, again :—

"For the first time since the creation of the world, *the act* which CONSTITUTED a great people, LAID THE FOUNDATION OF THEIR GOVERNMENT upon the *unalterable and eternal principles* of HUMAN RIGHTS."

That which "*constitutes*" and "lays the foundation of *government*"—must be called a *Constitution of government*, so long as words are used to signify things and convey ideas.* One extract more must suffice.

"The Declaration itself did not even announce the States as sovereign, but as united, free, and independent, as having power to do all acts and things which independent States may *of right* do. *It acknowledged, therefore,* A RULE OF RIGHT, PARAMOUNT to the power of independent States, and virtually disclaiming all power to DO WRONG.† This was a novelty in the moral philosophy of nations, and it is *the essential point of difference* between the SYSTEM OF GOVERNMENT announced in the *Declaration of Independence,* and those systems which had until then prevailed among men.‡ *A moral Ruler of the Universe, the Governor and Controller of all human power is the* ONLY *unlimited* SOVEREIGN, acknowledged by the Declaration of Independence, and it claims for the United States of America, when assuming their equal station among the nations of the earth, only the power to do all that may be done *of right.*"—*Page* 26.

How much of a "compact," "compromise," toleration, or "guaranty" in favor of SLAVERY—the acknowledged "sum of all villanies"—may be made and entered into, "OF RIGHT" we need not stop to inquire. No person of sane mind and sound morals could mistake so plain and palpable a point. Nor will any one worth arguing with, or answering, pretend that there can be *constitutional or legal slavery* in any State, Province, District, or Territory, where our American "Declaration" of self-evident truths, and of inalienable human rights is to be regarded as holding the authority of CONSTITUTIONAL LAW.

The courts of Massachusetts have settled that question, long ago; and the same Declaration of self-evident truths that makes slavery illegal and unconstitutional in Massachu-

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* Whether Mr. Adams would agree with us in *calling* it a Constitution, we can not say. But we insist that he has stated the fact correctly, and that the existence of such a fact is equivalent to the existence of a constitution of civil government. If our premises are attested by those who dissent from our conclusions, the proof of those premises is so much the stronger, and of our conclusions, our readers will judge for themselves.

† Mr. Adams had previously noticed and repudiated the doctrine of British lawyers that "*sovereignty* is identical with unlimited and illimitable power"—"the principle, the *resistance* to which was the vital spark of the American revolutionary cause."

‡ In this sentence, you may substitute the words *Constitution* and *Constitutions* in the place of *system* and *systems*, without changing the meaning: that is, if Noah Webster knew the meaning of the words. See his Dictionary, as before quoted.

setts, makes it illegal and unconstitutional in the District of Columbia, and in Georgia, and throughout all the "United States of America"—by whom that Declaration was made.

THE ALTERNATIVE.—THE DECLARATION OF INDEPENDENCE, IF THE ACT OF SEPARATE STATES, EQUALLY FATAL TO LEGAL SLAVERY.

So far as the illegality of slavery in the United States is concerned, it will not materially change the result, if we take, by way of supposition and as a basis of argument, the theory concerning State sovereignty and the Federal Government, the most opposite to the one that has just been maintained.

We will suppose then that the Declaration of Independence had been the declaration of separate, disunited States; each State acting by and for itself alone. To make the case as strong as possible we will suppose that on or about the 4th of July, 1776, there had been no "Continental Congress" but that each separate colony in its separate Congress assembled, had promulgated its Declaration of Independence, of self-evident truths, of inalienable human rights, and of separation from Great Britain, for the object of establishing governments based on those fundamental principles or truths, and for the security of those rights.

In that case we should have had, (in these thirteen separate Declarations of Independence, of self-evident truths, of human rights, and of the establishment of new governments on the basis of those truths and rights,) thirteen distinct constitutions of government, of the same character with the Constitution of Massachusetts, which abolished slavery in that State. Such being the fact, the Federal Convention of 1787 could have found no legal slavery in existence to form a "compact" or "compromise" *about*—to "guaranty" or to tolerate.

And even if we should not insist upon the technicality of a "Constitution" or of "Constitutional Law," (either State or National,) in this matter—the same result will not be vitally changed. It will still be true that there is no legal slavery in any one of the thirteen original States, and consequently none in the new States growing out of them, or founded by them.

Whether the act of a State be called a Constitution, or a statute, an ordinance or a declaration, it nevertheless remains *an act of the State*, and carries with it the *authority and power* of the State. And since no one disputes that on the 4th of July, 1776, the Declaration of Independence, so famil-

iar to us all, *was actually made* by the thirteen States, it follows that by the power of that act, SLAVERY WAS ABOLISHED in each and every one of those States, and has been illegal ever since, because slaves, once emancipated, can not be re-enslaved by any subsequent act. No one supposes that Massachusetts, Connecticut, or New York, could now legally reduce again to slavery the persons or the posterity of those whom they have once emancipated. And the more strongly the slave States insist that the Declaration of Independence must be considered the act of the separate sovereign States, and not the *united* act of the "*People*" of the United States, northern and southern, the more strongly do they claim the glorious act of the ABOLITION OF SLAVERY, in 1776, as *their own act;* the less cause will they have, of complaint, as though it were forced upon them by stress of circumstances and by the urgency or the overpowering predominancy of northern votes; and at all events, and either case, they may congratulate themselves that the act of emancipation was drafted by one of their most honored citizens, so that they should not feel themselves aggrieved if "*full faith and credit* shall be given, in each State, to the *public acts*, records, and judicial proceedings of every other State," agreeably to the provision of the Federal Constitution, Article 4, Section 1.

THE "DECLARATION," NEVER REPUDIATED BY THE SLAVE STATES, IS STILL BINDING UPON THEM.

Whatever theory we adopt, therefore, it remains true that there has been no legal slavery in the United States, since the 4th of July, 1776. Having been abolished *then*, there is no power, or authority, either State or National, that could have established it *since*. There is nothing, either in the Articles of Confederation of 1778, or in the Constitution of 1787–9, that even professes to have done so, or that recognizes the legality of any slavery then existing. By no public act did either of the thirteen States that put forth the Declaration of Independence, in 1776, signify to the Nation or to the world their renunciation of that Declaration, or of any truth, principle, or doctrine contained in it, or their desire to be considered as not being bound by it, up to the time of the framing and ratification of the Federal Constitution: no: nor have they done so, from that day to this! Having assented to the Federal Constitution without any such renunciation, disclaimer, or repudiation of their emancipation act of 1776, it ill becomes any of the States to com-

plain that their most honorable act, is considered as binding upon them, *now;* and that they should be expected, (according to the express provision of the Constitution of 1787–9, which they assisted to frame and having ratified) to maintain "*a republican form of government*" in accordance with the definition of such government which their own Declaration of Independence, of self-evident truths, and of inalienable human rights, is well known to contain. The world and the Nation have a fair right to hold them bound by their act of 1776, and to consider and treat all the slavery existing since that date as existing in violation of law, and of their own most solemn declarations and plighted faith. Having adopted the Federal Constitution without any repudiation of their former declarations and principles, the public sentiment of the civilized world should require of them that they construe that Constitution in accordance with those principles, *and abide by its provisions, as thus construed.*

CHAPTER VI.

OF SLAVERY UNDER COLONIAL AUTHORITY.

ITS LEGALITY QUESTIONED.

By what authority, or by what right, did the colonists or the colonial legislature maintain slavery? Was that authority derived from the Crown, Parliament, Judiciary or usages of Great Britain? If *not*, from whence was it derived, while the colonies recognized their colonial obligations to the parent State? They claimed no right of sovereignty, then.

It will hardly be maintained, except by the school of McDuffie, that the right of slaveholding, or of enacting slave laws, is derived from the law of *nature* or of divine *revelation.* No lawyer ever thought of going to the "*Common Law*" for a warranty of slavery or of slave laws.

Undoubtedly the claim was, and is, that slavery was sanctioned and legalized by the parent State. A standing apology for American slavery has been found in the fact that English slavers were permitted by the British Government, to visit the colonies, with cargoes of slaves. This has even been called forcing their slavery upon us, just as though we were *obliged to buy* what the slavers were *permitted to offer* us. The original draft of the Declaration of Independence, by Mr. Jefferson, made it one of the grave charges of the

colonies against the King of Great Britain, and one of the proofs that he was *a tyrant*, and not fit to govern a free People, that he permitted this traffic to be carried on.

If there be any force or propriety in complaints of this nature against the Government of Great Britain, it must be because the legality of slavery in the mother country made it difficult or impracticable for the colonial authorities to declare it illegal.

But *slavery in England* was abolished, in the judicial decision of Somerset's case by Lord Mansfield in 1772. It was abolished on the broad principles of *Common Law*. The decision therefore was, that slavery *never had been legal*, in England! It was, in fact, a re-affirming of an old decision, in the case of Gallway versus Caddee, before Baron Thompson, at Guildhall, as early as 1699, thirty years previous to the counter opinion of York and Talbot, in 1729.*

As slavery therefore, *never had been* legal in England, *how could it ever have been legal in the colonies?* The colonists brought the Common Law of England to this country with them, and their recognition of it, as a rule of judicial proceedings, was among their most cherished rights. If slavery was illegal in England, because it was contrary to the Common Law, how could it be legal in the colonies, where the authority of the same Common Law was recognized? And if the English courts could discover and decide its illegality, why could not the colonial courts do the same? And why were they not bound to do it, as well as the courts in England? The Common Law declares that "human laws are of *no validity* if contrary to the law of nature, which is coeval with mankind, and dictated by God himself." If this principle was permitted to be recognized, even at the Court of King's Bench, is it credible that there was any authority in *colonial* legislation too high and too sacred to bow to the *same* principle when enforced by a colonial court?

Whatever plea of deference to English decisions might have availed for the colonies or their courts, up to 1772, the memorable decision of that period left them without that excuse, afterwards.† Chief Justice Shaw of Massachusetts,

* Vide C. Stuart's life of Granville Sharpe, page 85.

† It may be pleaded, perhaps, that the delay of Great Britain, until 1807, wholly to prohibit the foreign slave-trade, and until very recently to abolish her colonial slavery, prevented the Judicial decision of 1772, abolishing slavery in England, from being held as a precedent, by the colonies. This *criminal delay* of Great Britain, we should neither excuse nor *imitate*, as we should do, were we longer, as a nation, to permit, in any portion of our empire, a violation of our great National "compact" of 1776. But why was the interference of the British Parliament needed, in the matter of her colonial slavery, but because the colonial courts failed to follow, as they should have done, the precedent of the Somerset case? The fact that *English* soil was kept free from slavery while it existed in the West Indies, proves that *Virginia* soil might have been

in his opinion on the case of the Commonwealth vs. Thomas Aves, [vide Pickering's Reports, page 209–10, already quoted,] is inclined to think that the Judicial abolition of slavery in that State, soon after the Revolution, *may* have been made "by the adoption of the opinion in Somerset's case, as a declaration and modification of the Common Law." If an American Court might do this, *after* the separation from Great Britain, why not *before?*

These questions will have been understood as preparatory to another, viz: *Whether there was any legal slavery in the colonies during the four years from* 1772 *to* 1776?

If there *was*, then the Common Law permitted in the *colonies*, what the same Common Law would not permit in the *mother country*. If there was *not*, then there is no legal slavery in the United States of America *now*, unless the Declaration of Independence, and the glorious Revolution have introduced it again, or stood sentinel against the Common Law, to prevent it from discharging its proper functions! And if this may be believed, what may we refuse to believe?

But on these points we shall not stop to insist. We leave it for the lawyers to decide. Such of them as can find legality in slavery *any where*, may contrive to find it *every where*, for aught we can tell.

Whoever would discover the legality of slavery must pursue his inquiries further back than the Constitution of '87—the Declaration of '76—or the decision of '72. On the coast of Africa, and in the perpetration of deeds which, if proved in a Court of Justice, would swing up the perpetrators, as pirates, to the yard-arm, by the laws of all civilized nations THERE it is, and to those ACTS that we must look, if any where, for the ground and origin of *lawful slavery*.*

And as to colonial authority the question is not so much where the colonies could find authority and power enough to *abolish* their own slave laws—as where they could find author-

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* "Sir William Blackstone examines those causes of slavery" (crimes, captivity and debt, as cited by Paley) "by the Civil Law, and shows them all to rest on unsound foundations, and he insists, that a state of slavery is repugnant to reason, and the principles of natural law. The Civil Law, admitted it to be contrary to natural right, though conformable to the usage of nations."—*Kent's Commentaries, page* 247.

[And since, by Common Law, "human laws are of no validity, if contrary to the law of nature," the "usage of nations" can not make slavery legal.]

"*Opinion of Marshall, C. J.* in the case of the Antelope, 10 Wheat. 120. He is speaking of the slave-trade, but the remark itself shows that it applies to slavery. 'That it is contrary to the law of nature will scarcely be denied. That every man has a natural right to the fruit of his own labor, is generally admitted, and that no other person can rightfully deprive him of those fruits, and appropriate them against his will, seems to be the necessary result of the admission.'"—*Pickering's Reports, p.* 211. *Quoted in opinion of C. J. Shaw, case of the Commonwealth vs. Thomas Aves.*

ity and power enough to *enact* them? Such authority and power "the English Common Law," (the paramount law of the realm,) does not concede to the Monarch and Parliament of Great Britain.

CHAPTER VII.

NATURE AND FOUNDATION OF GOVERNMENT AND LAW.

Parchments, papers, precedents—Whence their authority? Compacts—on whom binding?—Government as an ordinance of God—The "social compact" an exploded fiction—A more substantial theory needed—Where shall we find it?—Civil government a science; compared with other sciences—Has its foundation in *facts*—Nature and relations of man—Scripture prophecy—First principles immutable—Can not be set aside by compacts and parchments—Recognized by Common Law—What *is* Common Law?—Whence its paramount power?—One universal law—Founded on the Divine Will—Constitution of civil government not arbitrary—Absurdities can not become law—Law can not be created by man—can only be discovered, obeyed, and applied—Harmony of our National Documents with these principles—Objections considered.

Parchments—Papers—Precedents, &c.

We have been speaking of *law*—of *government*—of *constitutions* of government—of things *legal* and *illegal*. And, in doing this, we have hitherto been chiefly occupied in expounding *papers*, *parchments*, *documents*, *records* of things done or agreed to be done, somewhere, and by somebody, before the greater part of the present generation were born. We have looked into *books*, *cited authors*, *authorities*, *usages*, *precedents*, *customs*.

It is high time to ask ourselves whether this is all we know or may know, of law, government, constitution (or principle) of government—of the legality—illegality—validity—or nullity of statutes or enactments claimed to be *laws*.

Does the pith and gist of the matter lie in the paper—the parchment? Or lies it in something beyond, or back of the parchment, or the paper? Have we found the *thing*, when we have found the parchment, the paper, or have we found only what purports to be a *statement*, a *description* of the thing itself?

If there should happen to be a mistake in the paper—if there should be knavery or stupidity, or accidental blunder in the printer or penman of the document, have we no rem-

edy but to take it as it is, for better or for worse? Are there no *things*, to which we can gain access, *ourselves*, to correct the blunders that may have been made, by *others?* If not, who can tell whether or no the printers, the penmen, or those who set them at work, had access to any such veritable realities, themselves, or whether they spun the whole web out of their own brains?

Compacts—on whom binding?

And whence the *binding authority* of laws, constitutions, and governments? You prove to me that a certain "compact" was made some fifty years ago, while I was an infant, or before I was born. You authenticate to me the *fact.* Very well. But how does that fact bind *me*, who had no part in the bargain? If, as is often said, the *whole* authority of civil government is founded in "*compact*," how can that authority be binding on any persons except those by whom the compact was made? Suppose I do not choose to come into the "compact," what have its provisions to do with *me?* My being born in the country where the "compact" was made, does not render me a party to the compact. I had a right to be born, when and where my Creator saw fit, and am not beholden to the makers of paper compacts for my right *to be* where Divine Providence has placed me, and to be a man, on my own proper account, and behoof. My good father or grandfather, (peace to their ashes,) may have signed the compact, as they had a right to do, if they saw fit. But they stood in their own shoes, and I stand in mine—as truly a man as either of them, with the same unimpaired powers—with the same high responsibilities to my Creator, to my country, and to my race, that they had. They had no power to make me less of an independent man, and a voluntary free agent, than they were, themselves. And they have not done it.

Thus, at least, men will reason, (and have reasoned,) when they wish to throw off the obligations, either of civil government in general, or the particular government they live under, or any enactments which they think oppressive, or which they dislike. And it might be very convenient to have something more logical to confute them with, than papers and precedents, something more august to overawe them than full bottomed wigs, (now grown into disuse,) something more satisfactory than gibbets, something more philosophical and more Christian than powder and ball, especially when wielded as *substitutes for the right,* instead of instruments of *suppressing the wrong.*

And most manifestly, civil government must have some other and higher authority than "*mere* compact" if we would claim for it the reverence due to "an ordinance of God."

"Social Compact" a Fiction, &c.

The date, moreover, and the locality of that great town-meeting of the human race, in which it was agreed to emerge from "a state of nature" and "enter civil society" with "a part of their rights surrendered for the better protection of the rest"—(as the old legend hath it,) is a matter that the paper and parchment records have never yet reached. The recent explosion of that wretched fiction of the old writers of civic romance, has left a vacuum in the theory of government, as existing in the literature of the age, which it is high time to fill up with *substantial truth*, if the high obligations of GOVERNMENT and of LAW are to retain any hold upon the ever progressive popular mind.

Who can tell us *whether there be* any such substantial truth to inculcate, unless our conceptions of government, of constitution and of law, can run back of mere libraries and precedents, of legislative enactments, of legal decisions, of conventional agreements, and fasten hold of SOMETHING of which all these are but the *exponents*, the *declarations*, the *expressions*?

Civil Government, a Science, &c.

In every other department of human activity and of human science, it is expected that the operator and the student should be able to fix his grasp upon *something in the form of fixed realities, besides* the mere papers and books that profess to give him *an account* of them. He is expected to examine *the things* for himself, and to use his parchments only as *means* to facilitate this examination. Why should the science of government be an exception?

The practical mariner, with his chart of the Indian Ocean before him, never mistakes his chart for the ocean itself. He explores the ocean, with its rocks, reefs, and islands, by the help of his chart, but never gives the credit to his chart of being more correct than the ocean, when he finds reefs and islands in the latter, that are not laid down in the former! He does not substitute the *paper description* of the thing for the *thing itself*. Why should the *ship of State* be guided by a petty pedantry that would be derided by the rudest sailor before the mast? With eyes to survey the great "*self-evident truths*" *of political science*, why should

statesmen or jurists, deserving the name, run the commonwealth, (committed, with all its vast interests, into their hands, as pilots) into the midst of the thick breakers, and rocky reefs, plain in sight before them, merely because they can not find them marked out distinctly, on their antiquated paper charts?

What would be thought of the mathematician who should identify the sciences of arithmetic, or geometry, or algebra, *with his book*, his approved and highly *authoritative book* on those subjects? Who should never speak of "*arithmetic*" with any higher meaning to the word than *the book* he holds in his hands? But such a village pedagogue, could we find one, would well deserve a place beside the grave senator, or the learned judge of the Supreme Court, who has no higher meaning to the phrase, "*the Constitution of the United States*" than the written or printed parchment or paper, agreed upon, and drawn up by the Convention that assembled in 1787—forgetful that a *Constitution of Government*, like a theorem in algebra, or a fact in chemistry or botany, or zoology, or astronomy, is a palpable, veritable, *existing fact*, whether any books or papers have described them correctly, or undertaken to describe them at all.

And this opens before us another series of questions—which the present generation will have to decide upon, and in the decision settle the destinies of their country perhaps for ages to come. Their decision *will not alter the facts and principles* upon which they are called to decide. But it will fix the condition of the Republic, by determining its *adjustment* to those unchangeable principles and facts.

Nature and relations of Man.

The problem may be stated in some such queries as these —Is there, after all, any thing, in *the social nature of man*, in the *relations* of man to man, in the *duties* growing out of those relations, (duties therefore, imposed upon man by the author of his being,) which lay a foundation, (as they create a moral necessity) for such a science as that of civil government, a science as fixed and determinate, in the nature of things, as any of the other demonstrative sciences, based upon "*self-evident truths*" a science no more to be altered by parchments, or conventional arrangements, or precedents, than the sciences which enable the persons acquainted with them to traverse land and ocean by steam—a science which written constitutions, enacted statutes, and recorded decisions, can more or less correctly or incorrectly *describe* (or perchance contradict) *but can never alter nor change.*

Unless there be such a *science of legislation and of law*, which mankind can be *taught*, can *understand*, and can *apply*, then civil government itself becomes a cheat, and legislation becomes a farce, and jurisprudence becomes an usurpation, which the onward and rapid march of mankind must speedily detect, and woe to the conservators of a law and a government that shall prove themselves to be such contemptible shams, then.

Scripture Prophecy—Principles Immutable.

If the period ever arrives—(and the harp of prophecy hath hymned it—the plighted word of Jehovah hath spoken it) that the kingdoms of this world shall become the kingdoms of our Lord and of his Christ—controlled by his righteous laws, wielded for the fulfilment of his benevolent purposes of equity, mercy, peace on earth and good will to man, that period will be ushered in by a correct knowledge and an honest application of those FIRST PRINCIPLES OF CIVIL GOVERNMENT which are as immutable and as moveless as the throne of God himself, which recorded precedents can no more modify than they can the courses of the stars, which conventional compacts can no more eclipse or blot out, than they can the sun and the moon, which enacted statutes can no more repeal than they can the laws of gravitation, which judicial decisions can no more cancel or set aside, than they can the downward rush of the torrent, or the flight of the winged lightnings of heaven. The kingdoms, or the pretended republics that will not honor these principles, identical with the laws of God, shall come to nought, those nations shall utterly be wasted. They shall be wearied with their own way, and filled with the fruit of their own doings. But the meek shall inherit the earth. The upright will He guide in his way, and by *righteousness* (a practical regard to the *right*) shall the nations of the saved be *exalted*.

The conceptions of civil government thus spiritual and sublime, by what means, by the use of what symbols, shall the present generation of statesmen and jurists be raised? Deep buried under huge folios of precedents and of records, of technicalities and of conventionalisms, in the fog of ever calculating but never calculated expedients and expediencies, in the slough of never ending bargains and barters, in which the needy are sold for a pair of shoes and the fruit of righteousness turned into hemlock,—with what parchments, with what papers, with what documents, with what records, with what enactments, with what decisions—save those of

the sacred scriptures, that they trample under their hoofs, shall such a generation of jurists and statesmen be reached?

Common Law, secret of its power.

The volumes of the Common Law, doubtless, embodied and re-echoed as they are in our own Declaration of Independence, and in the Preamble of the Federal Constitution, technically so called, come the nearest to the instrumentalities we are seeking, of any thing within our reach. Our jurists, (aye, and our statesmen for the most part,) have heard of the *Common Law*, and have learned something of its authority and power. And the very soul of the Common Law is identical with the fundamental truths we would insist upon.

For *what is* the Common Law, the highest standard of appeal in our civil courts—the Common Law, that corrects hoary abuses, reverses judicial decisions, annuls statutes, revises charters, repeals parchments, abolishes omnipotent parliaments with its presence, and annihilates royal prerogatives with a nod—the Common Law, that Luther like, looks confederate emperors in the face, and to their most authoritative mandates answers, calmly, "no!" The Common Law that stepping into the Court of King's Bench, and taking up the slave code, avers, solemnly and decidedly that there is not power nor authority enough in the British Government, Kings, Lords, Commons, Judiciary and all, to make that iniquitous code, legal! That *says* this, and is *obeyed!*

From what source is this mighty and resistless power of the *Common Law* derived? Did King and Parliament that are overawed in its presence, at any time, enact the authority they hate, and before which they cower? When Common Law would present its credentials, does it show a commission signed by the dignified officials on the bench to whom it gives law, and whom it claims as its servants?

Or is it to the book makers, the compilers, the learned recorders, the writers, the printers, the publishers, or the hawkers, of Common Law maxims, that we must look, for the sources of the high authority with which they are clothed?

Let us open our eyes to the fact that the Common Law is superior, and paramount, and prior to all these—that she "teaches as one having authority, and not as the *scribes*"—the mere copyists or commentators of parchments—that she speaks in her own name, or rather, in the name of universal, essential, *uncreated, unalterable law*, in the other words, in the name of the most high and eternally supreme God.

Common Law has power, not because it is printed in certain antique volumes of sheep-skin, that the librarians pre-

serve and that the courts reverence, but because it is the voice of the Creator, speaking through the human nature he has created—the voice of human conscience and of common sense, uttered and engraven by *human suffering and human necessity*, demanding justice, equity, redress of wrongs, at the hands of those who undertake to govern men, and demanding it with an importunity that has forced open the ears and subdued the spirits even of unjust judges that fear not God, nor regard man. Such in a word (instead of a volume) is an epitome of what might be denominated, by way of tittle page, the "national history of the COMMON LAW,"—a history by no means confined to the Anglo-Saxons, but co-eval with the history of man's struggles for his rights, the world over. Even in China itself, there is a Common Law* that the Emperor may not annul—that the Emperor must needs obey.

ONE UNIVERSAL LAW.

An expansion and purification of this idea of Common Law may introduce to us, the *one universal law*—the law of nature sometimes termed—under which all nations are placed—a law from which civilization and the social state does not release men—a law which it is the *sole business* of civil government to ascertain and enforce, in the *execution of justice, between a man and his neighbor*. "The rightful power of all legislation," says Thomas Jefferson, "is to declare and enforce only our *natural* RIGHTS *and* DUTIES, and take *none* of them *from* us. When the laws have declared and enforced all this, they have fulfilled their functions." This *universal* law, then, is the ONLY law. Whatever conflicts with this, is to be repudiated (as say likewise the writers on Common Law) "not as being *bad* law, but as being NO law!" Hence, nothing subversive of equity deserves the *name* of law, or is to be *treated* as law, by any of the officers, the Judges, or the executors of law. There is, and there can be, no valid or binding law, at variance with justice or equity, either on earth or in heaven.

SOURCE OF LAW, IN THE DIVINE WILL.

Power belongeth unto God. All rightful rule and authority are from him. By bestowing social and moral existence on man, he has, of necessity, imprinted *the law* of that social and moral existence upon them. By giving them the *nature* they possess, he has bound them by *the law* of that nature.

* In the parlance of the Canton merchants—"*old custom*"—founded on common notions of equity—which the mandarins or magistrates are expected to see enforced. This Common Law of China goes far to counterbalance and hold in check the otherwise unlimited despotism of that empire.

By establishing the *relations* they sustain to each other, he has indicated the *duties* they owe to each other. Among these duties is *the duty of the* COMMUNITY (not a select portion of them) to see that the rights of *each member* of the community is respected, and uninfringed. From the plagues of Egypt to the present hour, the universal history of the providential government of God, over the nations, attests this great truth that it is the MASSES and *not* the *officials merely*, of the nations, that God and nature hold responsible for the executing of *just judgment*. Fealty to *justice*, not to *parchments* is the constant burden of his requisitions.

Constitution of Government not Arbitrary.

If this be a truthful account of civil government, then the *Constitution* of civil government has a *foundation in nature*—that is to say, in the DIVINE WILL. It is an *existing matter of fact*, as much so as is the Constitution of the *human body*. Of the *latter*, the physiologist, (Dr. Combe for example) may have given a more or less reliable account, in the books they may have written. Of the *former*, the Convention of 1787, may have traced, more or less correctly, the outlines, and indicated the appropriate details. In the former case, an individual, in the latter case, a convention, and afterwards an entire nation, assumed the responsibility of the statements. Both are statements and not *creations*, nevertheless. The Federal Convention, and "we the People of the United States" could no more *make* a Constitution of civil government, out of a cloth of our own fabric, and upon any principles that might suit our own selfishness or caprice—a Constitution that should be *valid* and *binding;* than Dr. Combe and an university of physiologists could *make*, at their own whim or pleasure, a constitution of the human body, that should, be binding upon all the anatomists and surgeons of a nation, or on all who should have occasion to contract their muscles, and move their limbs!—In both cases, it is *God* who has *made* the constitutions. All that men in either case can do, is to *learn*, to *teach*, and to *use* them.

As much as this, the *Common Law* says, when it denies that human authorities can make wicked and unjust laws, that can be binding and valid. As much as this, the *Declaration of Independence*, by obvious implication says, when it claims for the new Republic the power to "do all acts and things which independent States may, OF RIGHT, do." As much as this, the Preamble of the Federal Constitution recognizes, and the same is supposed in the provision to cor-

rect its own mistaken statements of "justice" by "amendments" of its provisions.

Absurdities can not become Law.

Why should any men stultify themselves, or degrade by broad caricature, the claims and prerogatives of that civil government they would teach men to respect, by inculcating the reverse of this doctrine? How would they have us regard a provision of a paper Constitution that incidentally (by way of describing a boundary line, for example) should bid us locate the river Ohio west of the Missouri, or the Rocky Mountains east of the Mississippi? Would our judges and jurors, in all coming time, be obliged thus to regard and describe them? Suppose there were a constitutional "*compact*" or a legislative *enactment*, that the three angles of every right angled triangle should be "deemed, taken, reputed, and adjudged in law to be" equal to *seven* right angles, would the provision be binding? Could it be made "*Constitutional Law?*" Suppose it were provided that all *elephants* should henceforth be *mice*, and that *men* should henceforth be *things*,—*immortal spirits*, *chattels personal!* Could either of those provisions become *law?* To say so, would be to *deny the distinctive characteristics of law itself;* to say that it is not to be defined either by order, by fitness, by truthfulness, or by rule:—that it is, in no way, distinguishable from waywardness, from falsehood, from lawlessness—from caprice!

Man may discover, but not create, law.

The alchymists of the dark ages supposed it possible to obtain by compound, a substance, which they called the philosopher's stone, the touch of which should transmute whatever it touched into gold! We smile and wonder at their folly, and we may justly claim that, *except* in the science of jurisprudence, the world has made some creditable progress, since the times of the achymists. But in the midst of the nineteenth century, under the light of the Christian scriptures, in the presence of the Common Law, and almost seventy years after the glorious American Declaration of self-evident truths, and inalienable human rights, it is still held and maintained by grave and learned men, that certain pieces of parchment or paper, emanating from certain places, and prepared by certain hands, possess the power of transmuting whatever folly or selfishness may have been pleased to write upon them into *valid and authoritative law!* Have power to counteract creative wisdom and goodness,

by transforming an immortal *man* into a *thing!* Compared with this dream of the jurists of the nineteenth century, the dreams of the alchymists of the eleventh century may almost be pronounced philosophical as well as harmless.

The time, however, can not be far distant, when these matters will be better understood—when legislative and judicial halls will be occupied in the rational task of *learning, declaring*, and *applying* to the affairs of men, the great principles of *eternal, immutable* LAW, rather than in vain attempts, either to CREATE, or to ANNUL it. To establish a *manufactory* and to commission *manufacturers of* LAWS for the government of the solar system, laws for the government of mineral, vegetable, or animal existences, chemical laws, or laws of hydrostatics; all this might pass for a rational amusement (as it seems indeed to have been the amusement of philosophers, before Lord Bacon's time) in the comparison with the still current usage of attempting to manufacture CONSTITUTIONAL LAW, the law by which the *social relations of man*, in political communities, must be governed! When shall the *inductive* instead of the constructive and hypothetical philosophy be applied to the science of *government!* When will men see that they can only *discover* and *obey*, not *construct*, the laws of the political world! That their paper constitutions can only *teach* and *declare*, not *originate*, the fundamental principles of a civil government!

To the case in hand. Human beings can no more construct a civil government, with binding authority over human beings, yet without the power to "execute judgment between a man and his neighbor," than they can construct a globe without the quality of roundness, or a cube without its six sides. Abortions and absurdities they may multiply as they please. "There *is no* authority but of God," and the authorities that *be* (that truly possess any binding authority) "are *ordained* of God." *These* "are a terror not to *good* works, but to the *evil*." They are "the ministers of God" "attending continually upon this very thing," and on no other ground, and in no other character, can they rightfully claim to be recognized, or deserve the "tribute" of support. [Paul, in Rom. XIII, 1—9.] *A Constitution of civil government, therefore, that tolerates slavery, is an absurdity that can not exist.*

OUR NATIONAL DOCUMENTS.

With these plain principles of common sense, of Common Law, and of our common Christianity, the national documents of our common country, in the main, happily har-

monize. Our Declaration of Independence and the Constitution of 1787–9 taken as members of each other, considered as a *whole*, and construed by its *spirit*, constitute a creditable statement of Constitutional Law, and even without the amendments of which they are susceptible, are amply sufficient in their provisions, for either the legislative or judicial abolition of slavery. An oath to support the Constitution of the United States is an oath to promote "*justice*" and secure "*liberty*," an oath to adhere to its "self-evident *truths*" and vindicate *inalienable human rights*. The legistor perjures himself who takes this oath and refuses to legislate against slavery. The judge perjures himself who takes this oath, and does not, when the opportunity offers, proclaim deliverance to the captive.

Objections Considered.

It has been said by some of the friends of the enslaved, that in our political efforts in their behalf, we must not attempt to wield powers of government not conceded to us by those expositors of the Constitution whom the Constitution itself provides, (to wit,) the Judges of the Supreme Court—that we must give to the Constitution the same construction *they* give it, in the active exertions *we* put forth. But what if *they* have construed it *wrong?* Are *our* consciences to be bound by *theirs?* Or may the judicial department dictate before hand, to the legislative? May not a member of Congress in the discharge of *his* duty, vote for the abolition of slavery, as *he* understands his lawful powers, and throw upon the judges the responsibility of pronouncing the legislation unconstitutional, if they can? And besides, for what object do the friends of God and humanity wield their political powers, in this grand struggle, but to rescue *every department* of the government, the judicial, as well as the legislative and executive, from the polluting and withering touch of the slave power? Are not *the People* as truly responsible for a sound judiciary as a sound legislature? Is it not quite as essential for the security of their rights? And does not the Constitution recognize in the PEOPLE the constitutional guardians even of the judiciary itself—the ultimate expositors of the Constitution? "JUDGES and officers shalt thou make thee in all the gates which the Lord thy God giveth thee, throughout thy tribes, and they shall rule the people with just judgment." If the present judges decide wrongfully, we must indeed *submit* to their decisions, for the time being, though we must *not assist* in executing their unrighteous decisions, nor lose a moment's time in putting things in train

for providing *better successors* in their place, whenever their seats shall be vacant.

The views of law that have been presented will alarm some with the apprehension that they would tend to fluctuation and change—that conflicting views of *justice and equity* would beget constant uncertainty and doubt. The very reverse of all this is the truth. The "*glorious uncertainty of the law*" (so convenient to those who subsist on the spoils,) has grown into a proverb already. Who does not know that conflicting constructions of statutes and parchments, decisions versus decisions, precedents arrayed against precedents, and technicalities against common sense, have made law a vast game of hazard, now, and that a few maxims of that same COMMON LAW we would exalt, constitute almost the only element of stability, of certainty, or of justice, that remain. On this point, and as a conclusion of the whole discussion, we introduce a further extract from the correspondence of the Oberlin Anti-Slavery Committee with Hon. Wm. Andrews.

"It may be said that this rule makes every man his own constitution maker and law maker. There might be some force in this, if the law of God were some indefinite thing which man's arbitrary will might mould into any shape it pleased. But the principles of fundamental morality are more clearly and determinately laid down by ethical writers than the import of the Constitution of the Union by the sages of the law. Our public men could have all the motives for giving the divine law an honest interpretation which urge them to intrepret the Constitution honestly. Mistakes might be committed which would need to be corrected by the courts, or by subsequent legislation; but the general consequences would be a gradual improvement in the moral aspect of society. The fountain would be healthy and the stream salutary. Law would be venerable in the eyes of men, and the sublime words of Hooker would be no rhetorical flourish:—'Of LAW there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the VERY LEAST AS FEELING HER CARE, AND THE GREATEST AS NOT EXEMPTED FROM HER POWER. Both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her, as the mother of their peace and joy.'"

POSTSCRIPT.—Since the preparation of the preceding pages, the writer has received a copy of "Gerrit Smith's Constitutional Argument against Slavery," which contains some citations from "the Madison Papers," to which we had not access, while writing. The following items in the proceedings of the Federal Convention of 1787, are worth recording.

"On motion of Mr. Randolph the word '*servitude*' was struck out, (by the Convention, from Art. 4th, Sect. 2,) and '*service*' UNANIMOUSLY inserted, the former being thought to express the condition of slaves, and the latter the obligations of free persons." [How then, can this provision be claimed as having been designed to apply to *fugitive slaves?*]

Mr. Gerry said in the Convention that "it ought to be careful not to give any sanction to slavery." And Mr. Madison, on the floor of the Convention, "thought it wrong to admit in the Constitution, the idea that there could be property in man."

Whether Mr. Smith quotes this *latter* from the "Madison Papers" or from some other authentic source, we are uncertain, and it is not material. We were aware that some such language had been used by Mr. Madison in the Convention, but could not lay hold of the precise words, while writing, and so omitted any mention of it.

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19. Ohio Resolutions. Resolutions of the A. S. Convention in Ohio, (attributed to Mr. Chase) Cincinnati Weekly Herald, 1844. Adopted also at Buffalo A. S. Convention, Sept. 1843.

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